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In The
Supreme Court of the United States

ARKANSAS ANNUAL CONFERENCE OF THE AFRICAN METHODIST EPISCOPAL CHURCH, INC., an Arkansas Corporation and THE AFRICAN METHODIST EPISCOPAL CHURCH, INC., a Pennsylvania Corporation,

Petitioners,

v.

NEW DIRECTION PRAISE AND WORSHIP CENTER, INC., an Arkansas Corporation,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Arkansas

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether judicial analysis of an intra-denominational dispute under "neutral principles of law" as set forth in *Jones v. Wolf*, 403 U.S. 595 (1979) can be applied to the facts of this case although it cannot ultimately be resolved by any court without addressing issues of church doctrine and polity, without creating an "excessive entanglement" issue under *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

2. Whether, assuming the answer to question no. 1, *supra*, is in the affirmative, amendments of a foundational charter document of a hierarchical connectional church subsequent to the holding in *Jones*, *supra*, and in response to that case, should control the legal analysis of the facts presented herein or, instead, the law of trusts as it existed at the time of the purchase should control.

3. Whether the "neutral principles of law doctrine" allows that a foundational charter document for a connectional hierarchical church to be altered by an extended course of dealing and practice between the parties.

LISTING OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

PETITIONERS:

Arkansas Annual Conference of the African Methodist Episcopal Church, Inc., an Arkansas non-profit corporation;

African Methodist Episcopal Church, Inc., a Pennsylvania non-profit corporation;

New Direction Praise and Worship Center, Inc., an Arkansas non-profit corporation;

Darryl L. Bailey, Lloyd Worthy and Vivian Nooner, are each natural persons and former Trustees of Sand Hill AME church and incorporators of New Direction Praise and Worship Center, Inc.

The corporations each and all are non-profit organizations and have no stockholders as such, but rather have members of the religious bodies they represent.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES AND REQUIRED CORPORATE STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	vi
CITATIONS TO LOWER COURTS	1
STATEMENT OF JURISDICTIONAL BASES	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	1
28 U.S.C. §1257. State Courts; certiorari	1
United States Constitution, Amendment 1	2
Ark. Code Ann. §18-11-201	2
Ark. Code Ann. §18-11-202	3
STATEMENT OF THE CASE	3
ARGUMENT	10
I. AS PLEADED AND ARGUED, NEUTRAL PRINCIPLES OF LAW CANNOT BE APPLIED IN THE CASE AT BAR	10
II. THE HOLDING OF THE TRIAL COURT AND THE ARKANSAS SUPREME COURT IS IN CONFLICT WITH THIS COURT'S HOLDING IN *JONES V. WOLF*, 403 U.S. 595 (1979) AS WELL AS THE MAJORITY OF STATE COURTS THAT HAVE CONSIDERED THE ISSUES HEREIN	16

TABLE OF CONTENTS – Continued

Page

III. THE "NEUTRAL PRINCIPLES OF LAW DOCTRINE" ALLOWS FOR A FOUNDATIONAL CHARTER DOCUMENT OF A CONNECTIONAL HIERARCHICAL CHURCH TO BE ALTERED BY AN EXTENDED COURSE OF DEALING AND PRACTICE BETWEEN THE PARTIES 21

CONCLUSION 23

APPENDIX

OPINION OF THE ARKANSAS SUPREME COURT DELIVERED JANUARY 30, 2009, ARKANSAS ANN. CONF. OF THE AFRICAN METHODIST EPISCOPAL CHURCH, INC., ET AL. v. NEW DIRECTION PRAISE AND WORSHIP CENTER, INC., CASE NO. C 08-167 ..... App. 1

HOLDING OF THE PULASKI COUNTY CIRCUIT COURT, SECOND DIVISION DELIVERED AUGUST 1, 2007, CASE NO. CV-06-8690 ..... App. 16

JUDGMENT OF THE PULASKI COUNTY CIRCUIT COURT, SECOND DIVISION DELIVERED JULY 12, 2007, CASE NO. CV-06-8690 ..... App. 29

REMARKS FROM THE BENCH, HON. JOHN PLEGGE SPECIAL JUDGE, PULASKI CIRCUIT COURT DELIVERED JUNE 25, 2007, CASE NO. CV-06-8690 ..... App. 33

TABLE OF CONTENTS – Continued

Page

EXCERPTS FROM *THE DOCTRINE AND DISCIPLINE OF THE AFRICAN METHODIST EPISCOPAL CHURCH*, 2004 ..... App. 38

QUITCLAIM DEED ..... App. 61

MINUTES FROM MEETING OF OCTOBER 9, 2005 ..... App. 64

TABLE OF AUTHORITIES

Page

CASES

African Meth. Eps. v. St. Johns African Meth. Eps., Slip Op., Case No. 08AP050037 (Ohio Court of App. Fifth Division 3/24/2009) 18

Arkansas Annual Conference of the African Methodist Episcopal Church, Inc., et al. v. New Direction Praise and Worship Center, Inc., et al., Slip Op. No. 08-167, ___ Ark. ___ (Ark. Sup. Ct. 2009) 1

Arkansas Presbytery of the Cumberland Presbyterian Church v. Hudson, 344 Ark. 332, 40 S.W.3d 302 (2001).....9, 16, 17, 18

Cumberland Presbytery v. Branstetter, 823 S.W.2d 417 (Ky. 1992) 20

Episcopal Church Cases, 45 Cal.4th 467, 198 P.3d 66, 87 Cal. Rptr. 3d 275 (2008).....19, 20

Episcopal Diocese v. Harnish, 11 N.Y.3d 340 (2008).....20

From the Heart Christian Ministries v. Philadelphia-Baltimore Annual Conference of the African Methodist Episcopal Zion Church, 2546, Slip. Op. (Md. App. 1/28/2009).....19

Jones v. Wolf, 403 U.S. 595 (1979) .....*passim*

Lemon v. Kurtzman, 403 U.S. 602 (1971).....15

North Central New York Annual Conference v. Felker, et al., Trustees Savannah United Meth. Church, 28 A.D.3d 1130 (New York, 4th Dept. 2006).....20

TABLE OF AUTHORITIES – Continued

Page

Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) 14, 15

St. Paul Church v. United Methodist Church, 145 P.3d 541 (Alaska 2006) 20

CONSTITUTIONAL PROVISIONS, STATUTES, RULES

United States Constitution, Amendment 1 ..... *passim*

Arkansas Constitution of 1874, Article 2, Sections 24 and 25 14

28 U.S.C. §1257 1

Ark. Code Ann. §18-11-201 ..... 2, 13

Ark. Code Ann. §18-11-202 ..... 3, 13

OTHER AUTHORITIES

THE DOCTRINE AND DISCIPLINE OF THE AFRICAN METHODIST EPISCOPAL CHURCH, 2004 EDITION 7, 8, 9

THE DOCTRINE AND DISCIPLINE OF THE AFRICAN METHODIST EPISCOPAL CHURCH, 1968 EDITION 8, 9, 17

CITATIONS TO LOWER COURTS

Arkansas Annual Conference of the African Methodist Episcopal Church, Inc., et al. v. New Direction Praise and Worship Center, Inc., et al., Slip Op. 08-167 (Arkansas Sup. Ct. 1/30/2009), ___ Ark. ___, 2009WL223122.

New Direction Praise and Worship Center, Inc., et al., Arkansas Annual Conference of the African Methodist Episcopal Church, Inc., et al. v. New Direction Praise and Worship Center, Inc., Daryl L. Bailey, et al., Slip Op. 06-8690 (Pulaski Circuit Court 7/6/2009) (unpublished). See App. 16 et seq., R. 207 et seq.

STATEMENT OF JURISDICTIONAL BASES

The final judgment of the Arkansas Supreme Court was entered on January 30, 2009, making this petition due on or before April 30, 2009, the ninetieth day after said decision. There was no motion to reconsider filed.

CONSTITUTIONAL AND STATUTORY PROVISIONS

28 U.S.C. § 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by

> the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States. (b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Amendment I. Religious and political freedom

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Ark. Code Ann. § 18-11-201. Trustees to hold in perpetual succession

> All lands and tenements, not exceeding forty (40) acres, that have been, or hereafter may be, conveyed by purchase to any person as trustee in trust for the use of any religious society within this state, either for a meeting house, burying ground, campground, or residence for their preacher, shall descend with

> the improvements and appurtenances in perpetual succession in trust to the trustee or trustees as shall, from time to time, be elected or appointed by any religious society, according to the rules and regulations of the society.

Ark. Code Ann. § 18-11-202. Authority of trustees

> The trustee or trustees of any religious society shall have the same power to defend and prosecute suits at law or in equity and do all other acts for the protection, improvement, and preservation of trust property as individuals may do in relation to their individual property.

STATEMENT OF THE CASE

This case is a case involving the Establishment Clause of the First Amendment. The Arkansas Annual Conference of the African Episcopal Church ("Arkansas Annual Conference" or "Annual Conference") is part of the 12th Episcopal District of the African Methodist Episcopal Church, Inc. (hereinafter "AME" or "the connection") a hierarchical connectional church with communicants throughout the United States and in many foreign countries. As such, it operates a local congregation known as Sand Hill AME Church ("Sand Hill"). Plaintiff/Respondent New Direction Praise and Worship Center ("New Direction") is an Arkansas non-profit corporation formed by a group of defecting members of Sand Hill who

decided to leave that AME congregation but who brought suit to retain real property that AME believes to rightfully belong to the connectional church and/or the Arkansas Annual Conference. Matters of church polity and doctrine are established at a national and even multi-national level by the connection through a series of quadrennially published books known as *The Doctrine and Discipline of the African Methodist Episcopal Church* ("*The Discipline*" or "*The Doctrine and Discipline*").

Sand Hill AME Church is a small congregation more than 100 years old that was formed around 1885 by a group of former African-American slaves from Tennessee who had been freed and decided to reside in the southern part of Pulaski County, Arkansas. (R. 308). The congregation joined the African Methodist Episcopal denomination at the formation of the church. Established in Philadelphia in late 1816, the connection was itself about 75 years old when Sand Hill was formed.

One of the first families to join was the Bailey family. As long as living memory can tell, the Baileys have made up a majority of the congregation, so much so that the church was sometimes referred to as "Bailey Chapel," a name unsanctioned by any AME body but popularly used in the community.

From 1885 until October 9, 2005, when a group of dissidents chose to leave the AME movement and establish their own independent congregation ("New Direction") the church was associated with and

totally identified with the connectional AME church. They could not, under the church's policy, buy, sell or dispose of lands without the permission of the Annual Conference and the Quarterly Conference of which they were a part. (Plaintiff's Exhibit 19, page 57).

The Trustees of Sand Hill AME Church were among those voting to dissociate and were the incorporators of New Direction. After the vote to dissociate, in November of 2005 these former Sand Hill members, continued to meet in the same building but gave no notice to the Arkansas Annual Conference or the Bishop of the district of their intentions. New Direction was incorporated by the former Trustees who transferred title to the real property belonging to Sand Hill AME by means of a quitclaim deed to the new corporation. (See generally R. 281-283). Then, but only then, did they contact Bishop R.A. Chappelle[1] through his agent, Reverend Eugene Brannon, the "presiding elder" in charge of Sand Hill and other churches scattered throughout the southern half of Pulaski County. Reverend Brannon demanded the keys to the church, which were handed over, and claimed the real property for the Annual Conference and the connectional church.

Subsequently New Direction brought a suit in ejectment for the real estate and replevin of certain personal property. (R. 6-7). It was the contention of Respondents at that time that "The real property was

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[1] Since retired and replaced by Bishop Samuel Greene.

conveyed in 1971 from the Estate of Will Bailey to the Trustees of Sand Hill. The conveyance was absolute on its face and did not convey any legal or equitable estate to the African Methodist Episcopal Church, Inc. or any of its districts or conferences." (R. 6). An exhibit was attached to the complaint which was a deed of the property "to George Bailey, Fred Jones, and Harris Bailey as the Trustees of Sand Hill AME Church." (R. 10). The Respondents' theory was that since neither Sand Hill nor the Arkansas Annual Conference of the AME Church were incorporated and since the national connectional church had not registered in Arkansas, the property belonged to the Bailey heirs (i.e., the current Trustees) and they could dispose of it as they wished. The complaint further notes that Sand Hill was "affiliated" with the AME for decades but did not follow the requirements of the AME church which was said to include incorporation. (R. 3). Subsequently in 1981 a building was constructed on the site allegedly without help from the connection or the Annual Conference. (R. 4). In the course of time, the old Trustees died and new ones, Baileys or their collaterals all, took office in their stead and remained as such until this controversy arose.

The crux of the dispute is found in paragraphs 15-17 relating to the assessment of "dues" by the Annual Conference which were felt to be excessive. Such assessments are based upon the size of the congregation as the Annual Conference perceived it to be (about 66 members). Sand Hill felt that it was

being treated unfairly as the Annual Conference had determined that the assessment should be set at a higher number than the local congregation had indicated existed (a dozen or less). As a result of this assessment and, according to their minutes, the lack of concern for salvation of souls shown by the Annual Conference, the Baileys and assorted collateral kin met with the pastor and voted unanimously to secede from the denomination. (R. 534, Plaintiff's Exhibit 14). They did not exhaust the internal remedies and grievance procedures available within AME before taking this action.

Membership in the AME is voluntary and communicants are free to leave at any time. However, property given to any AME Trustee for any unit of the AME church is given "in trust" for the benefit of the entire connection. Exiting members are required to return the same upon exiting the denomination. This has always been the understanding in the churches. (R. 440-475, 475-494). It was codified in 1984 as such and appears in the 2004 edition of *The Discipline* (R. 539, Plaintiff's Exhibit 19, page 57).

An answer with counterclaim and third-party claim was filed by Petitioner and, thereafter, a motion to dismiss the complaint on First Amendment grounds with supporting brief. The crux of the allegations therein were that the Trustees, upon voting to dissociate, were *ipso facto* precluded from being agents/trustees for the AME or the Annual Conference, and that their status as such was a function of the *2004 Doctrine and Discipline of the AME*

Church, a quadrennial publication of the connection that sets out the operating instructions for AME bodies across the connection. (R. 68-75).

The Respondents replied that the "neutral principles" of Arkansas trust law should govern and be applied to the original conveyance of the property in 1971. Thus the Respondents said that the 1968 Edition of *The Doctrine and Discipline of the AME Church*, not the 2004 Edition, should control. The 1968 Edition contained wording which seemed to require that the local congregation incorporate and utilize a specific form of deed to convey to the church.

Both sides relied upon *The Doctrine and Discipline of the AME Church* which, among other things, defines the religious and other qualifications for membership in the AME and for operating as an officer in the churches such as Trustee. As such, Petitioner believed that excessive entanglement of the State with the Church would occur. Accordingly a motion to dismiss on First Amendment grounds was made, briefed and argued. (See R. 68-70, 250-255). The motion was denied.

At trial a steward of the church admitted that Trustees of the AME church are essentially agents of the connection and are required to make reports to the Quarterly and Annual Conferences. (R. 296-300). An official of the Annual Conference stated that it had always been the policy and practice of the AME church that any property received by the AME local congregation was held in trust for the Conference and

the connection in general. See 2004 *Doctrine*, *supra*, and Bishop R.A. Chappelle testimony, *supra*.

The Court however found that the dealings between the two entities, the AME Annual Conference and the Sand Hill congregation had been informal. As such, he ruled in favor of New Direction. Upon timely filing of an appeal, the case was briefed and argued to the Arkansas Supreme Court. On January 30, 2009, the Court affirmed, based on the holding of *Jones v. Wolf*, 403 U.S. 595 (1979) and its own previous holding in *Arkansas Presbytery of the Cumberland Presbyterian Church v. Hudson,* 344 Ark. 332, 40 S.W.3d 301 (2001). Petitioner believes that the holding in *Hudson* is contrary to the holding of this Court in *Jones v. Wolf* and also that even if the 1968 *Discipline* is the correct authority to gauge this controversy by, that adjudicating it requires at least an implicit finding of who is and is not validly a member or a Trustee of the AME denomination and their authority to transfer and deliver good title to AME property. As such it is inextricably tied to religious questions of fitness to serve, moral character and the like. Finally, Petitioner believes the position of the Arkansas Supreme Court to run counter to the vast majority of the other Courts of last resort in the several states that have determined this issue. The issue has become one of great importance due to the reactions of various local connectional bodies across the nation and their reactions to denominational decisions such as ordination of women and gay

clergymen by the overarching denominational authority.

It is to address these issues, excessive entanglement and the proper interpretation of certain language in *Jones v. Wolf*, that this petition is brought.

ARGUMENT

I.

AS PLEADED AND ARGUED, NEUTRAL PRINCIPLES OF LAW CANNOT BE APPLIED IN THE CASE AT BAR

The African Methodist Episcopal Church is a denomination of predominantly African-American Christians that is located throughout the nation and in several foreign lands. It is a hierarchical church, governed by appointed bishops and clergymen of various types. There are internal procedures for settling disputes over polity and doctrine. It is currently, and has always been, the policy of the AME church (the connection) that individual church congregations may not buy or sell property without its express consent as expressed by the Annual Conference and the Quarterly Conference in which the local congregation participates.

Moreover, Trustees of any part of AME are expected to adhere to the rules and meet the qualifications of a foundational document known as *The Doctrine and Discipline*, a quadrennial publication

that lays out rules on church polity and doctrinal policy. Trustees have to be qualified to act as such and, if they leave the AME, cease to hold the office of Trustee. As the testimony at trial showed, just who is and who is not a Trustee is a mixed matter of both church doctrine and church law. Trustees act as agents for and fiduciaries of the local body of which they are a part. As even Respondent's own witnesses noted, they are amenable for control and examination to the Annual Conferences and, ultimately, the connection itself, and are required to submit reports and undertake various actions to advance the mission of AME to reach souls.

In exactly the same way, membership in the AME is defined by *The Discipline* under certain criteria that each communicant must meet.

From day one in this dispute, Respondents herein have sought to gloss over the religious aspects of this matter and call it a simple matter of interpretation of a trust and a deed. It is not. The complaint and other materials note that the church had suffered a loss of membership but was still being assessed their yearly dues to AME at a rate intended for a larger church. Such dues are utilized to pay salaries of various officials, to provide trained ministers for the local congregations, to help and upkeep missions foreign and domestic, and to secure lower prices for such things as Sunday School materials and music through economies of scale that no small congregation could begin to match.

On October 9, 2005, a meeting of ten (10) persons, all being Baileys or Bailey collateral relatives, met and voted that "Sand Hill" leave the AME connection as a unit. The reasons for this were said to be: 1. The disagreement with the Annual Conference over the assessment which was, itself, based upon the number of members in good standing on the rolls; 2. The fact that the Annual Conference seemed to the membership to have inadequate zeal for "souls being saved" or how they could help struggling congregations. (R. 534, Plaintiff's Exhibit 14). Next, the Sand Hill Trustees formed a new, non-denominational corporation, namely Respondent, New Direction. (R. 545, Plaintiff's Exhibit 24(a)). Thereafter, without consulting or notifying the Annual Conference or the Quarterly Conference, much less their approval as *The Discipline* required (no matter which edition is used), the self-same Trustees deeded Sand Hill property to New Direction. (R. 523, Plaintiff's Exhibit 3, Quitclaim Deed). Last, they finally notified the Annual Conference that they had voted as a body to leave AME and that they intended to take connection property with them. (R. 535, Plaintiff's Exhibit 15).

In Arkansas, a religious society, whether incorporated or unincorporated, can sue and be sued, hold and control realty and other property, etc., only through its Trustees. The State purports to accept the internal practices of a given society in determining whether a Trustee is so authorized. The Arkansas Code Annotated says:

Ark. Code Ann. § 18-11-201. Trustees to hold in perpetual succession

> All lands and tenements, not exceeding forty (40) acres, that have been, or hereafter may be, conveyed by purchase to any person as trustee in trust for the use of any religious society within this state, either for a meeting house, burying ground, campground, or residence for their preacher, shall descend with the improvements and appurtenances in perpetual succession in trust to the trustee or trustees as shall, from time to time, be elected or appointed by any religious society, according to the rules and regulations of the society.

Ark. Code Ann. § 18-11-202. Authority of trustees

> The trustee or trustees of any religious society shall have the same power to defend and prosecute suits at law or in equity and do all other acts for the protection, improvement, and preservation of trust property as individuals may do in relation to their individual property.

The big problem with proceeding as Respondent/Plaintiff did in this transaction (self-dealing aside) is that under *The Discipline* a non-member cannot be a Trustee. A non-member is *ipso facto* forbidden to hold this post as *The Discipline* and the testimony at trial showed. On October 9, 2005, when the dissidents voted to withdraw from AME, they ceased to be members and, accordingly, ceased to be Trustees and

fiduciaries of the AME church. They had, therefore, no power from and after that time to alienate property belonging to the Sand Hill congregation, the Annual Conference and thereby to the connection as a whole. Implicit in the holding of the trial Court and the subsequent affirmation by the Arkansas Supreme Court is the idea that a judge may determine who is and who is not qualified as a Trustee of the AME church. Moreover, as this whole dispute arises, by the Plaintiff's own pleading and proof, from a conflict over church rules and "saving souls" (i.e., the appropriate mission of the local congregation) it is a dispute that effectively establishes the doctrinal and polity viewpoint of the dissidents as the correct one. Government, at any level, does not have the authority to make such a decision under our First Amendment and the similar provisions of the Arkansas Constitution of 1874, Article 2, Sections 24 and 25.

In *Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976) this Court held that the secular courts of a State could not determine who is and who is not qualified to hold an office in a given denomination. Presumably, that stricture also applies to who is or is not a member. In this case, the trial judge implicitly decided that the Trustees of Sand Hill AME Church still had control of the church property and therefore had a right to alienate same to themselves as incorporators of New Direction nearly a month after withdrawing from the fellowship of the AME connection.

Moreover, this dispute is really one about membership and money. In order to make the assessments that so galled the Bailey faction, the Arkansas Annual Conference had to effectively count noses. The Quarterly Conference, and by extension, the connection, counted 66; the Baileys counted 10. Whoever was correct, this was a matter for the judicatory bodies of the AME church to decide. That decision had to be based on another decision: Qualification to be a member of the African Methodist Episcopal denomination in good standing. That is very much an ecclesiastical determination that turns on an adequate profession of faith, appropriate baptism, moral character and reputation, participation in the life of the church, relationship to other communicants, etc. – all religious concepts. This is something only the church itself could do. The attempt to interpret the deeds thus fails at the threshold under the First Amendment, and the holdings in *Milivojevich*, *supra*, *Jones v. Wolf*, *supra*, and also the third prong of the test of *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

II.

THE HOLDING OF THE TRIAL COURT AND THE ARKANSAS SUPREME COURT IS IN CONFLICT WITH THIS COURT'S HOLDING IN *JONES V. WOLF*, 403 U.S. 595 (1979) AS WELL AS THE MAJORITY OF STATE COURTS THAT HAVE CONSIDERED THE ISSUES HEREIN

In *Jones v. Wolf*, 403 U.S. 595 (1979) this Court held that the "rule of compulsory deference" to religious bodies in disputes over land was not required. The dissent therein had concerns about situations such as has arisen here wherein a connectional church may have had an on-going relationship with a local congregation, only to have the local body defect at some point taking with it property which the connectional body had considered its own. The majority answered this with the following language:

> Under the neutral principles approach, the outcome of a church property dispute is not foreordained. *At any time before the dispute erupts* . . . the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden will be minimal. *And the civil courts will be bound to give effect to the result* indicated by the parties.

Jones v. Wolf, at 606 (Emphasis supplied)

However, the Arkansas Supreme Court subsequently decided a case, *Arkansas Presbytery of the Cumberland Presbyterian Church v. Hudson*, 344

Ark. 332, 40 S.W.3d 301 (2001) in which, in reliance upon the aforesaid language from *Jones v. Wolf*, the Cumberland Presbyterian Church as a general church modified its foundational documents to read that any congregation which had accepted the benefits of membership in the connection and held itself out to be a member of the connection, held all property in trust for the connection, regardless of when it was acquired. The Palmetto Cumberland Baptist Church decided to defect from the denomination and a dispute arose over the church property. A highly divided Arkansas Supreme Court, in a 4 to 3 decision, said that the deeds must be examined with the understandings in place as they had been at the time of the acquiring of the property, a time when the charter of the Cumberland Presbyterian denomination did not have such trust language. The dissent quoted the *Jones* case, *supra*, in arguing that the appropriate fact was that the church had changed its charter before the dispute arose and Palmetto Church had acquiesced in this.

In 1984 the General Conference of the AME Church changed the wording in *The Doctrine and Discipline* to correct the problem in the manner which *Jones* suggested. The language is retained to the present and pre-dates the dispute in this case which arose in 2005. (See R. 539, Plaintiff's Exhibit 19, page 57). Thus this case was decided under the *Hudson* precedent which, as noted, runs counter to this Court's holding in *Jones*. The Court held that the appropriate time to examine the charter was as it

existed in 1968, the last publication prior to purchasing the property. As such it was wrongly decided just as *Hudson* was and should be reviewed by this Court.

In the interim since this case was originally filed, the issue has become extremely important, affecting several denominations around the country. The decision of the various connectional churches to allow the ordination of gay individuals, notably the Episcopal Church U.S.A., has caused something of a revolt by more conservative local congregations. The decision herein and in *Hudson* are definitively in the minority.

In a case almost identical on its facts, the Ohio Court of Appeals, Fifth Div. has, within the last month prior to this petition, decided a case in that jurisdiction according to the language quoted herein above from *Jones v. Wolf*. In that case, *African Meth. Eps. v. St. Johns African Meth. Eps.*, Slip Op. Case No. 08AP050037 (Ohio Court of Appeals, Fifth Div. 3/24/2009), a local congregation founded in 1920 decided to secede from the denomination. The Trustees likewise defected and became organizers/incorporators of a new "praise and worship" center. They then tried to sell and otherwise encumber property. The parcels bought by St. John's prior to the schism were held to be property of the connectional church, held in trust for same.

Another similar case decided January 28, 2009, was the final act in a decades long controversy. In

From the Heart Christian Ministries v. Philadelphia-Baltimore Annual Conference of the African Methodist Episcopal Zion Church, 2546, 2547 Slip Op. (Md. App. 1/28/2009), a megachurch ministry that had defected from a connectional church, the AME Zion denomination[2] was required to return and reimburse that denomination several million dollars in real and personal property, because, as with the AME Church, *The Discipline* of the AME Zion church had been revamped in light of *Jones v. Wolf* and relied on the above-cited language.

Likewise the California Supreme Court, finding itself inundated with similar lawsuits from the Episcopal Churches of California, cited the self same language as the rule of decision in *Episcopal Church Cases,* 45 Cal.4th 467, 198 P.3d 66, 87 Cal. Rptr. 3d 275 (2008) covering several breakaway congregations of the Episcopal Church U.S.A. Noting the danger of excessive entanglement, the Court there said:

> Applying the neutral principles of law approach, we conclude that the general church, not the local church, owns the property in question. Although the deeds to the property have long been in the name of the local church, that church agreed from the beginning of its existence to be part of the greater church and to be bound by its governing documents. These governing documents make clear that church property is held in trust for

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[2] An offshoot of the AME church.

> the general church and may be controlled by the local church only so long as that local church remains a part of the general church. When it disaffiliated from the general church, the local church did not have the right to take the church property with it.

Id. at 473.

The self-same question arises again in New York in the case of *Episcopal Diocese v. Harnish,* 11 N.Y.3d 340 (2008). The Court of Appeals there likewise decided the local property was held in trust for and reverted to the connectional body. The result was the same in *St. Paul Church v. United Methodist Church*, 145 P.3d 541 (Alaska 2006), involving a breakaway congregation of the United Methodist Church. To the same effect, see also *Cumberland Presbytery v. Branstetter*, 823 S.W.2d 417 (Ky. 1992) and *North Central New York Annual Conference v. Felker, et al., Trustees Savannah United Meth. Church,* 28 A.D.3d 1130 (New York, 4th Dept. 2006). Thus, as can be seen from the above-styled cases, the national trend is to interpret post-*Jones* amendments of foundational documents as controlling and awarding the connectional bodies. Arkansas is thus at odds with both the language of *Jones v. Wolf* and the emerging national trend. The United States Supreme Court should speak to this issue, especially in light of its importance to various faith communities around the nation.

III.

THE "NEUTRAL PRINCIPLES OF LAW DOCTRINE" ALLOWS FOR A FOUNDATIONAL CHARTER DOCUMENT OF A CONNECTIONAL HIERARCHICAL CHURCH TO BE ALTERED BY AN EXTENDED COURSE OF DEALING AND PRACTICE BETWEEN THE PARTIES

The evidence was uniform and overwhelming that the Sand Hill congregation always held itself out as an AME Church, always accepted the benefits and good offices of the connectional church, always participated in Annual and Quarterly conferences with the expectation that the church's business would be under the control of the Presiding Elder, in this case, Reverend Brannon, and the various Bishops appointed to head the 12th Episcopal District. The only piece of this puzzle that was missing was the incorporation of Sand Hill which was, allegedly, a matter of some dispute and deception. (Reverend Brannon stated that he had always, uniformly been told the congregation was, in fact, incorporated).

Bishop R.A. Chappelle and Elder Brannon both testified without contradiction that numerous small congregations in the Arkansas Annual Conference were unincorporated and that each of these associations functioned as fully recognized members of the AME connection. No congregation had ever been expelled for lack of incorporation. (R. 472-473). The record is replete with reports on the state of the local congregation and with testimony by communicants of Sand Hill and officers thereof of accountability to the

Annual and Quarterly conferences. New Direction, formed as it was in November 2005, was not in privity with this course of dealings between the AME and one of its constituent bodies. The original Trustees having passed away can no longer say what the understandings were, yet every piece of evidence, including that presented by Respondents, points to a body that thought it was part of the connection and acted that way until feelings were hurt. There is no requirement under First Amendment law that any religious body or member thereof follow the foundational charter and if, indeed, custom, practice, and course of dealing was all that was in place, this could, as well, provide proof of ownership. Nothing in *Jones v. Wolf* requires that any single factor in that decision be given controlling weight including the foundational charter of the denomination.

CONCLUSION

For these reasons, this Court should grant certiorari and decide this important national issue touching so many in connectional communities of faith and make the application of *Jones v. Wolf* consistent throughout the country.

Most respectfully submitted,

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SUPREME COURT OF ARKANSAS
No. 08-167

ARKANSAS ANNUAL CONFERENCE OF THE AME CHURCH, INC. and AFRICAN METHODIST EPISCOPAL CHURCH, INC., APPELLANTS, VS. NEW DIRECTION PRAISE AND WORSHIP CENTER, INC., DARYL BAILEY, LLOYD WORTHY, and VIVIAN NOONER, APPELLEES,	**Opinion Delivered** January 30, 2009 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, NO. CV06-8690, HON. CHRISTOPHER CHARLES PIAZZA, JUDGE, *AFFIRMED.*

JIM HANNAH, Chief Justice

This appeal involves a dispute over the ownership of church property located at 2311 Bailey Road, in Little Rock. Appellants Arkansas Annual Conference of the African Methodist Episcopal Church, Inc. (Arkansas AME) and African Methodist Episcopal Church, Inc. (National AME), collectively referred to as AME, appeal the judgment of the Pulaski County Circuit Court granting a petition to quiet title in appellee New Direction Praise and Worship Center (New Direction) and ordering the return of personal property, including a 1999 Dodge van. AME also appeals the circuit court's denial of its motion for supersedeas bond. We affirm the circuit court.

The real property that is the subject of this dispute is described as follows:

> Starting at the existing NW corner of the NE 1/4 of the NW 1/4, Section 21, Township 1 South, Range 12 West, Pulaski County, Arkansas, and run thence East 158.7 feet to the point of beginning; from the point thus established run thence South 208.7 feet; thence East 158.7 feet; thence North 208.7 feet; thence West 158.7 feet to the point of beginning, containing ¾ acres, more or less.

On December 27, 1969, Will Bailey, the owner of the real property, contracted to sell the real property to the Sand Hill AME Church (Sand Hill) for the price of $750, of which $500 was paid at the time of the contract of sale and $250 was payable in three years. On July 15, 1971, Geraldine Jones, as the administratrix of the Estate of Will Bailey, Deceased, conveyed by deed the real property to "George Bailey, Fred Jones, and Harris Bailey as Trustees of the Sand Hill AME Church, and to their successors in office."

In 1971, the membership of Sand Hill consisted of members of the Bailey family. Will Bailey was the uncle of Geraldine Jones, the administratrix of his estate. Two of the trustees named as grantees in the administratrix deed, George Bailey and Harris Bailey, were nephews of Will Bailey and brothers of Geraldine Jones. The remaining trustee named as grantee in the administratrix deed, Fred Jones, was the husband of Geraldine Jones.

Between 1971 and 1981, the members of Sand Hill saved to build a meeting house on the real property. Through the volunteer labor of relatives of the Bailey family, a concrete block meeting house was constructed in 1981. Vivian Nooner and Brenda Kay Webb, who were members of the congregation between 1971 and 1981, both testified that they could not recall any financial assistance from the Arkansas AME or the National AME for the purchase of the real property or the construction of the meeting house. Revered [sic] Eugene Brannon, the presiding elder of the Little Rock District of the AME, testified that he recalled a rally of area congregations of AME churches to raise funds for the purchase of the real property at issue and a second rally for the construction of the meeting house. Reverend Brannon stated that he could not, however, recall the amount of funds raised for the benefit of Sand Hill.

In 1981, the membership of Sand Hill still consisted of members of the Bailey family. According to Nooner, of the trustees of Sand Hill shown on the cornerstone of the meeting house constructed in 1981, all were members of the Bailey family. Nooner stated that of the stewards listed on the cornerstone, all but one, the pastor's wife, were members of the Bailey family.

No testimony or documents were introduced by any party regarding the formation of Sand Hill or its initial connection with the National AME. Nooner testified that, while Sand Hill accepted pastors from Arkansas AME, it did not associate exclusively or

even primarily with other AME churches. She stated that many of the churches with which Sand Hill associated were Baptist churches.

Between 1971 and 1995, the membership of Sand Hill numbered approximately ten to twelve members. Beginning in 1995 and continuing until 2004, the presence of a new pastor, Reverend Bowers, significantly increased the membership, and the number of members eventually grew to between fifty and sixty. When Reverend Bowers left Sand Hill in 2004, the membership again decreased to approximately ten to twelve members.

By August 2005, Sand Hill was encountering financial difficulties. AME policy requires AME churches to pay assessments on a quarterly basis, with the amount of assessments based on the number of members. Although its membership had decreased following Reverend Bowers's departure, the Arkansas AME did not reduce Sand Hill's quarterly financial obligations. By August 31, 2005, Sand Hill had only $1.26 left in its bank account.

On October 9, 2005, ten members of Sand Hill met and voted unanimously to disassociate from the AME. Thereafter, the members continued to meet for worship service in the meeting house on the real property. The members also met again to organize a new church and voted unanimously to incorporate a new church. The trustees of the congregation incorporated New Direction Praise and Worship Center, Inc. on November 15, 2005. The members also voted

unanimously to deed to New Direction title to the real property and to transfer title in a 1999 Dodge van to New Direction. A quitclaim deed was prepared by the trustees of New Direction on November 17, 2005, and the deed was filed of record on November 18, 2005. The members were unable to find the title to the Dodge van, so title was not then transferred to New Direction.

On November 26, 2005, the members of New Direction invited Reverend Brannon, the presiding elder of the Little Rock District of the AME, to meet with them at the property. They delivered a written notice to Reverend Brannon, informing him that the members of the congregation formerly known as Sand Hill AME Church were no longer affiliated or associated with AME. Reverend Brannon asked for a key to the building, and one of the members gave him a key. Other members retained their keys, but when they later returned to the meeting house, they found that their keys no longer opened the door. Arkansas AME subsequently sent an AME minister in training to conduct services in the meeting house. New Direction then brought a civil action for ejectment, quiet title, and replevin. The circuit court found in New Direction's favor, and AME now brings this appeal.

Subject-Matter Jurisdiction and the Neutral-Principles Approach

The first issue that must be decided is whether the circuit court had subject-matter jurisdiction to

resolve this dispute over church property. AME claims that the circuit court was without subject-matter jurisdiction because this matter could not be decided by neutral principles of law without resort to interpretation of church religious beliefs, practices, customs, organization, and polity. AME contends that the circuit court's decision is in violation of the Establishment Clause of the United States Constitution, as well as the similar guarantees of article 2, sections 24 and 25 of the Arkansas Constitution. New Direction asserts that the circuit court properly exercised jurisdiction over this dispute about church property because the dispute could be decided by applying neutral principles of law.

Where the existence of subject-matter jurisdiction is a question of constitutional interpretation, the standard of review is de novo. *Viravonga v. Wat Buddha Samakitham,* 372 Ark. 562, ___ S.W.3d ___ (2008); *Weiss v. McLemore,* 371 Ark. 538, 268 S.W.3d 897 (2007). In *Viravonga,* we stated:

> Both the United States Constitution and the Arkansas Constitution prohibit the courts from becoming involved in disputes between members of a religious organization that are "essentially religious in nature," because the resolution of such disputes "is more properly reserved to the church." *Gipson v. Brown,* 295 Ark. 371, 374, 749 S.W.2d 297, 298 (1988).
>
> Nonetheless, "[i]t is unquestionably the duty of the courts to decide legal questions involving the ownership and control of church

property." *Holiman v. Dovers,* 236 Ark. 211, 219, 366 S.W.2d 197, 204 (1963) (supplemental opinion denying rehearing). As the United States Supreme Court has noted, "[t]he State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively." *Jones v. Wolf,* 443 U.S. 595, 602 (1979). Yet, even when a property dispute is involved, courts must refrain from settling the dispute "on the basis of religious doctrine and practice" and instead apply only "neutral principles of law." *Id.* at 602-03; *see also Ark. Presbytery of Cumberland Presbyterian Church v. Hudson,* 344 Ark. 332, 339, 40 S.W.3d 301, 306 (2001) (expressly adopting the United States Supreme Court's neutral-principles approach); *Gipson,* 295 Ark. at 377, 749 S.W.2d at 300 (applying the neutral-principles-of-law analysis to determine whether there was jurisdiction over an internal church dispute).

. . .

While "it is impermissible for the civil courts to substitute their own interpretation of the doctrine of a religious organization for the interpretation of the religious organization," *Belin,* 315 Ark. at 67, 864 S.W.2d at 841, a court may nonetheless have to examine documents of a partially religious nature, such as church constitutions, in resolving a property dispute. *Jones,* 443 U.S. at 604. For example, a court can look at "(1) the language

> of the deeds; (2) the terms of the local church charters; (3) the state statutes governing the holding of church property; and (4) the provisions in the constitution of the general church concerning the ownership and control of church property" in determining whether a local church or one of its governing bodies holds title to church property. *Hudson,* 344 Ark. at 338, 40 S.W.3d at 306 (citing *Jones,* 443 U.S. 595.)
>
> . . .
>
> The United States Supreme Court has acknowledged that applying the neutral-principles approach to an examination of documents relating to a religious institution is not "wholly free of difficulty." *Jones,* 443 U.S. at 604. In performing its examination, the court must be careful to scrutinize such documents in "purely secular terms," deferring to the religious institution itself for the resolution of doctrinal issues. *Id.*; *see Hudson,* 344 Ark. at 339, 40 S.W.3d at 306-07.

Viravonga, 372 Ark. at 568-71, ___ S.W.3d at ___ (footnotes omitted).

While it is clear that civil courts have subject-matter jurisdiction to hear cases involving church property disputes, courts must settle the dispute by applying neutral principles of law. We must now determine whether the circuit court did so in this case.

The first element of the neutral-principles approach is to review the language of the deed. When we are called upon to construe deeds and other writings, we are concerned primarily with ascertaining the intention of the parties, and such writings will be examined from their four corners for the purpose of ascertaining that intent from the language employed. *Hudson, supra.* In reviewing instruments, our first duty is to give effect to every word, sentence, and provision of a deed where possible to do so. *Id.* We will not resort to rules of construction when a deed is clear and contains no ambiguities, but only when its language is ambiguous, uncertain, or doubtful. *Id.* Here, the language of the deed indicates that the local trustees of Sand Hill hold title to the property. As previously stated, on July 15, 1971, Geraldine Jones, as the administratrix of the Estate of Will Bailey, Deceased, conveyed by deed the real property to "George Bailey, Fred Jones, and Harris Bailey as Trustees of the *Sand Hill AME Church,* and to their successors in office." (Emphasis added.) Nothing in the language of the deed reflects that Sand Hill was held in trust for Arkansas AME or National AME.

As to the second element, the terms of local church charters, AME states that the 1968 edition of *The Doctrine and Discipline of the African Methodist Episcopal Church (Book of Discipline)* functions as both its charter and its general church constitution; therefore, our review of the second element will also

serve as our review of the fourth element.[1] Section 2 of the *Book of Discipline,* titled General Church Property, provides, in relevant part:

> 1. For the security of our meeting houses and the premises belonging thereunto, let the following plan of a deed of settlement be brought into effect in all possible cases wherever the law will permit it in a State.
>
> 2. If necessary, each Annual Conference may make such modifications in the deed as may be required by the laws of any State, so as to firmly secure the premises to the African Methodist Episcopal Church.
>
> 3. No personal or real property whatsoever of the A.M.E. Church in any foreign district or parts thereof shall be purchased, disposed of, sold, or otherwise

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[1] The 1968 edition was in effect at the time of the 1971 conveyance to Sand Hill. According to the testimony of Reverend Brannon, National AME's plan of title and governance of property of the local AME congregations was essentially carried forward without change in the editions of the *Book of Discipline* that were published every four years after 1968. At oral argument, counsel for AME stated that, while the 1968 edition of the *Book of Discipline* may have governed the original transaction, the *Book of Discipline* was later amended to include a provision stating that all local church property would be held in trust for the National AME. Counsel asserted that the members of Sand Hill "consented to the amendment" by their silence. Nevertheless, counsel conceded that AME did not make this argument before the circuit court.

encumbered except by the written consent of the presiding bishop and trustees elected by the Annual Conference in which the property is located.

4. The incorporation of all our churches, where the law will permit it, should be attended to as soon as possible. And in every corporation of the A.M.E. Church the pastor shall be president of the corporation and of the board of trustees, and the method of electing trustees shall be the same as prescribed in the Book of Discipline. Every pastor shall see that the provision is a part of the articles of incorporation.

Also included in Section 2 is a form for a trust deed for local church property that provided the property was to be held in trust for the use of the members of the National AME under the rules of the *Book of Discipline*. In addition, the form for a trust deed provided:

> Whereas some of the states and territories (and countries) have special acts on their statue [sic] book governing religious bodies, therefore the meaning and intent of this chapter wherever it refers to the law of the State or Territory is to be subject to the said state law and not to any individual church corporation that is now or may be incorporated.

The record reveals that Sand Hill was not incorporated. National AME did not introduce any evidence that it was involved in the purchase of the property. Arkansas AME did not introduce any evidence that it approved Sand Hill's purchase of the real property in 1969, at the time of the contract of sale, or in 1971, at the time of the delivery of the administratrix deed. In addition, the administratrix deed did not follow the form of the trust deed included in the *Book of Discipline*.

We next consider the third element, Arkansas statutes governing the holding of church property. Arkansas Code Annotated section 18-11-201 (Repl. 2003) provides:

> All lands and tenements, not exceeding forty (40) acres, that have been, or hereafter may be, conveyed by purchase to any person as trustee in trust for the use of any religious society within this state, either for a meeting house, burying ground, campground, or residence for their preacher, shall descend with the improvements and appurtenances in perpetual succession in trust to the trustee or trustees as shall, from time to time, be elected or appointed by any religious society, according to the rules and regulations of the society.

Likewise, Arkansas Code Annotated section 18-11-202 (Repl. 2003) provides:

> The trustee or trustees of any religious society shall have the same power to defend and

> prosecute suits at law or in equity and do all other acts for the protection, improvement, and preservation of trust property as individuals may do in relation to their individual property.

New Direction points to statutory law regarding trusts. Pursuant to Arkansas Code Annotated section 28-73-402(a) (Supp. 2007), a trust is created only if:

> (1) the settlor has capacity to create a trust;
>
> (2) the settlor indicates an intention to create the trust;
>
> (3) the trust has a definite beneficiary or is:
>
> (A) a charitable trust;
>
> (B) a trust for the care of an animal, as provided in § 28-73-408; or
>
> (C) a trust for a noncharitable purpose, as provided in § 28-73-409;
>
> (4) the trustee has duties to perform; and
>
> (5) the same person is not the sole trustee and sole beneficiary.

The language of the 1971 deed indicates that Will Bailey intended to create a trust for *Sand Hill AME Church,* see Arkansas Code Annotated section 28-73-402(a), which he was authorized to do pursuant to Arkansas Code Annotated section 18-11-201 (Repl. 2003). Nothing in the language of the deed suggests that Will Bailey had the intention of creating a trust in favor of either the National AME or the Arkansas

AME. Neither the National AME nor the Arkansas AME had an ownership interest in the property at the time of the conveyance, and neither was a party to the transaction.

Based upon the application of our neutral-principles approach and based upon our de novo review of the language of the 1971 deed, the provisions in the *Book of Discipline,* and Arkansas statutory law governing property and trusts, we hold that the circuit court did not err in quieting title in favor of New Direction, ordering AME's ejectment, and concluding that New Direction was entitled to replevin of the personal property located on the real property and the 1999 Dodge van.

Validity of the 2005 Deed

AME next contends that, even assuming that the trustees of Sand Hill had the authority to convey the property to New Direction, the conveyance must fail because the deed was invalid. The circuit court concluded, and we agree, that AME had no right, title, or interest in the real property at issue. Accordingly, AME lacks standing to challenge the November 2005 conveyance of the property to New Direction. As such, we do not address AME's arguments on this point.

Supersedeas Bond

AME contends that the circuit court erred in denying AME's post-trial motion for setting of a

supersedeas bond to stay proceeding pending appeal. Because we affirm the circuit court's judgment in favor of New Direction, AME's argument regarding the setting of a supersedeas bond is moot.

Motions for Award of Costs and Attorneys' Fees on Appeal

New Direction filed a Motion for Award of Costs and Attorneys' Fees Incurred By Reason of Appellants' Insufficient Abstract and Addendum. AME filed a response and, additionally, it filed a Motion for Award of Costs and Attorneys' Fees Incurred by Reason of Appellee's Insufficient Abstract and Addendum. Pursuant to Arkansas Supreme Court Rule 4-2(b)(1) (2008), "[w]hen the case is considered on its merits, the Court may upon motion impose or withhold costs, including attorney fees, to compensate either party for the other party's noncompliance with this Rule." After considering the merits of this case, we do not believe that either of the parties' abstracts and addendums are insufficient to the extent that costs should be imposed by this court. Accordingly, we deny both motions.

Affirmed.

**IN THE CIRCUIT COURT OF
PULASKI COUNTY, ARKANSAS
SECOND DIVISION**

**NEW DIRECTION
PRAISE AND WOR-
SHIP CENTER, INC.**

vs. **PLAINTIFF**

NO. CV-06-8690

**ARKANSAS ANNUAL
CONFERENCE OF
THE AFRICAN METH-
ODIST EPISCOPAL
CHURCH, INC. and
THE AFRICAN METH-
ODIST EPISCOPAL
CHURCH, INC.** **DEFENDANTS**

**ARKANSAS ANNUAL
CONFERENCE OF
THE AFRICAN METH-
ODIST EPISCOPAL
CHURCH, INC.** **COUNTER-CLAIMANT**

vs.

**NEW DIRECTION
PRAISE AND WOR-
SHIP CENTER, INC.,
DARRYL L. BAILEY;
LLOYD WORTHY;
and VIVIAN NOONER** **COUNTER-DEFENDANTS**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed Aug. 1, 2007)

On the 25th day of June 2007, this cause came for trial to the Court, and after hearing the opening statements of counsel, receiving the evidence presented on behalf of all parties, and hearing the arguments of counsel, the Court announced that it found in favor of the plaintiff on its complaint against the defendants and that it found against the defendant Arkansas Annual Conference of the African Methodist Episcopal Church, Inc. on its counterclaim and third-party complaint. On or about June 27, 2007, the defendants filed a motion for findings of fact and conclusions of law pursuant to Rule 52 of the Arkansas Rules of Civil Procedure. Pursuant to Ark. Rule Civ. P. 52, the Court enters the following findings of fact and conclusions of law based on the testimony and documents received into evidence, the briefs of the parties, and the arguments of counsel:

Findings of Fact

1. The real property that is the subject of this dispute is located in the City of Little Rock, Pulaski County, Arkansas and is particularly described as follows:

> Starting at the existing NW corner of the NE 1/4 of the NW 1/4, Section 21, Township 1 South, Range 12 West, Pulaski County, Arkansas, and run thence East 158.7 feet to the

> point of beginning; from the point thus established run thence South 208.7 feet; thence East 158.7 feet; thence North 208.7 feet; thence West 158.7 feet to the point of beginning, containing ¾ acres, more or less (the "Real Property").

2. On December 27, 1969, Will Bailey, the owner of the Real Property, contracted to sell the Real Property to the Sand Hill A.M.E. Church for the price of $750.00, of which $500.00 was paid at the time of the contract of sale and $250.00 was payable in three years. On July 15, 1971, Geraldine Jones, as the administratrix of the Estate of Will Bailey, Deceased, conveyed by administratrix deed the Real Property to "George Bailey, Fred Jones, and Harris Bailey as Trustees of the Sand Hill A.M.E. Church, and to their successors in office."

3. In 1971, the membership of the Sand Hill A.M.E. Church consisted of members of the Bailey family. Will Bailey was the uncle of Geraldine Jones, the administratrix of his estate. Two of the trustees named as grantees in the administratrix deed, George Bailey and Harris Bailey, were nephews of Will Bailey and brothers of Geraldine Jones. The remaining trustee named as grantee in the administratrix deed, Fred Jones, was the husband of Geraldine Jones.

4. The Real Property is located on Bailey Road in Little Rock, Arkansas. The Real Property lies in a larger tract of property that has been in the Bailey family for more than 100 years. During his lifetime,

Will Bailey did not convey any property that he owned to anyone other than members of the Bailey family.

5. Between 1971 and 1981, the members of the Sand Hill A.M.E. Church saved to build a meeting house on the Real Property. Through the volunteer labor of relatives of the Bailey family, a concrete block meeting house was constructed in 1981.

6. Two members of the Sand Hill A.M.E. Church who were members of the congregation between 1971 and 1981 testified at trial. Neither could recall any financial assistance from the Arkansas Annual Conference or the African Methodist Episcopal Church, Inc. (the "National A.M.E.") for the purchase of the Real Property or the construction of the meeting house. An elder of the Arkansas Annual Conference who testified recalled a rally of other area congregations of A.M.E. churches to raise funds for the purchase of the Real Property and a second rally for the construction of the meeting house. However, the elder could not recall the amount of funds that were raised by other area congregations of the A.M.E. for the benefit of the Sand Hill A.M.E. Church.

7. In 1981, the membership of the Sand Hill A.M.E. Church still consisted of members of the Bailey family. Of the trustees of the Sand Hill A.M.E. Church shown on the cornerstone of the meeting house constructed in 1981, all were members of the Bailey family. Of the stewards of the Sand Hill A.M.E.

Church shown on the cornerstone in 1981, all but one, the pastor's wife, were members of the Bailey family.

8. The association of the Sand Hill A.M.E. Church with the National A.M.E. was a loose association. No testimony or documents were introduced by any party regarding the formation of the Sand Hill A.M.E. Church or its initial connection with the National A.M.E. From the earliest recollection of any witness, the Sand Hill A.M.E. Church accepted pastors from the Arkansas Annual Conference of the African Methodist Episcopal Church. The Sand Hill A.M.E. Church, however, did not associate exclusively with other A.M.E. churches. Between 1971 and 1981, when the property was purchased and the meeting house was built, the Sand Hill A.M.E. Church associated with several Baptist congregations in the area, in additional to its association with the Arkansas Annual Conference of the A.M.E.

9. The National A.M.E. and the Arkansas Annual Conference of the A.M.E. were also loose in their adherence to their own requirements concerning the ownership and control of local church property. The 1968 edition of the book entitled *The Doctrine and Discipline of the African Methodist Episcopal Church*, with respect to general church property, set out a "plan of a deed of settlement" that was to be "brought into effect in all possible cases wherever the law will permit it in a State." The 1968 *Doctrine and Discipline* forbids the purchase of real or personal property except with the written consent of the presiding bishop and the trustees of the Annual

Conference in which the church was located. The 1968 *Doctrine and Discipline* also directed the incorporation of all A.M.E. churches "where the law will permit it, [which] should be attended to as soon as possible." Finally, the 1968 *Doctrine and Discipline* included a form of a trust deed for local church property that expressly provided the property was to be held in trust for the use of the members of the National A.M.E. under the rules of the book of *Discipline*. According to the testimony, the National A.M.E.'s plan of title and governance of property of the local A.M.E. congregations was essentially carried forward without change in the editions of the *Doctrine and Discipline of the African Methodist Episcopal Church* that were published every four years after 1968.

10. The Sand Hill A.M.E. Church was never incorporated. The defendants did not introduce into evidence any writing by the Arkansas Annual Conference approving the Sand Hill A.M.E. Church's purchase of the Real Property in 1969 at the time of the contract of sale or in 1971 at the time of the delivery of the administratrix deed. The administratrix deed did not follow the form of the trust deed in the 1968 *Doctrine and Discipline*. The administratrix deed did not create a trust in favor of the National A.M.E., the Arkansas Annual Conference of the A.M.E. or their membership. The administratrix deed conveyed fee simple title to three individuals, who were members of the Bailey family, as trustees of the Sand Hill A.M.E. Church.

11. Furthermore, the character of the Real Property as family property that had been in the Bailey family for more than 100 years, the plain language in the administratrix deed itself, and the lack of adherence to the plan for temporal governance and ownership of local church property in the *Doctrine and Discipline*, all negate any intent on the part of Will Bailey, his administratrix, and the trustees of the Sand Hill A.M.E. Church to create a trust in the Real Property in favor of either defendant or their memberships.

12. The National A.M.E. and the Arkansas Annual Conference of the A.M.E. were also loose in their adherence to their own governing documents. The 2004 edition of the *Doctrine and Discipline of the African Methodist Episcopal Church* included a copy of the charter of the National A.M.E. Church, dated in 1936. The articles of incorporation required the National A.M.E. Church to have a registered agent in every state in which the A.M.E. church existed. The articles also required each Annual Conference to be incorporated. The National A.M.E. had not, as of the date of trial, appointed a registered agent in the State of Arkansas. The Arkansas Annual Conference was not incorporated until November 10, 2005.

13. The membership of the Sand Hill A.M.E. Church remained stagnant at generally less than fifteen members from 1971 until 1995. From approximately 1995 until 2004, the Sand Hill A.M.E. Church was pastored by the same individual who grew the membership to between fifty and sixty. When that

pastor left in 2004, the membership at Sand Hill A.M.E. Church returned to approximately ten regular members. However, the financial obligations of the Sand Hill congregation to the Arkansas Annual Conference were not reduced. By August 2005, the Sand Hill A.M.E. Church had only $1.26 left in its bank account.

14. The members of the Sand Hill A.M.E. Church raised the financial straits of the congregation with the presiding elder of the Arkansas Annual Conference during his quarterly visits to the congregation. The presiding elder told the members to pray about the finances of the church. Regardless of whether the members followed this advice, the finances of the church did not improve.

15. On October 9, 2005, the ten members of the Sand Hill A.M.E. Church met and voted unanimously to disassociate from the African Methodist Episcopal Church. Thereafter, the members continued to meet for worship service in the meeting house on the Real Property. The members also met again to plan for a new church. The members voted unanimously to incorporate a new church. The trustees of the congregation incorporated the plaintiff New Direction Praise and Worship Center, Inc. on November 15, 2005. The members also voted unanimously to deed title to the Real Property and a 1999 Dodge van to the plaintiff corporation. A quitclaim deed was prepared by the trustees of the congregation on November 17, 2005, and the deed was filed of record on November 18, 2005. The members could not find the

title to the Dodge van, so the title to the van was not then assigned to the plaintiff corporation.

16. On November 26, 2005, the members of the congregation invited the presiding elder of the Arkansas Annual Conference to meet with them at the Property. The members delivered a written notice that the members of the congregation formerly known as Sand Hill A.M.E. Church were no longer affiliated or associated with the African Methodist Episcopal Church. The elder asked for a key to the building, and one of the members gave him a key. The Arkansas Annual Conference thereafter sent an A.M.E. minister in training to conduct services in the meeting house. The members of the plaintiff testified that their keys would no longer open the building. The members of the plaintiff did not interfere with the A.M.E. minister or others who have been worshipping in the meeting house on the Property or with their use of the van. Instead, the members of the plaintiff brought this civil action for ejectment, quiet title and replevin.

17. This dispute can be resolved by the application of neutral principles of Arkansas law. Neither Will Bailey nor his administratrix created a trust in the Real Property for the benefit or use of either defendant. After delivery of the administratrix deed, the trustees of the Sand Hill A.M.E. Church, in whom title to the Real Property was vested, did not create or convey a trust in the Real Property for the use or benefit of either defendant.

18. The Sand Hill A.M.E. Church did not follow the plan for temporal governance and ownership of property in the *Doctrine and Discipline*. The Sand Hill A.M.E. Church exercised autonomy over its temporal affairs.

19. The defendants have no right to ownership or possession of the Real Property, the personal property located therein, or the 1999 Dodge van.

Conclusions of Law

1. Where a controversy within or among religious societies involves issues of ownership of church property, the courts of this state have jurisdiction to peacefully resolve the dispute, so long as the resolution by the court does not involve consideration of any doctrinal matters. *West v. Belin*, 314 Ark. 40, 46-47 (1993) (quoting *Jones v. Wolf*, 443 U.S. 595 (1979)). The constitutional principles of the First and Fourteenth Amendments are not violated by this exercise of jurisdiction if the dispute over church property can be resolved by application of neutral principles of law. *Id. See also El-Farra v. Sayyed*, 2006 Ark. LEXIS 60, 7-8 (Ark. 2006); *Arkansas Presbytery of the Cumberland Presbyterian Church v. Hudson*, 344 Ark. 332, 40 S.W.3d 301 (2001); *Kinder v. Webb*, 239 Ark. 1101, 1102 (Ark 1965); *Holtman v. Dovers*, 236 Ark. 460, 366 S.W.2d 197, 366 S.W.2d 203 (1963); *Sanders v. Baggerly*, 96 Ark. 117, 131 S.W. 49 (1910).

2. The neutral principles of law applicable in cases like the present are the 'objective, well-established

concepts of trust and property law.' *Arkansas Presbytery of the Cumberland Presbyterian Church v. Hudson*, 344 Ark. 332, 339, 40 S.W.3d 301 (2001). Under neutral principles, all documents pertinent to the dispute "must be scrutinized in purely secular terms." *Id.*

3. In Arkansas, when a court is called upon to construe a deed, it is primarily concerned with the intent of the parties. *Webber v. Webber*, 331 Ark. 395, 962 S.W.2d 345 (1998). The court will examine the actual language of the deed from its four corners to ascertain the intent of the parties. *Id.* In reviewing a deed, a court must give effect to every word, sentence, and provision of the deed where it is possible to do so. *Id.* A court should not resort to the rules of construction in interpreting a deed unless the language of the deed is ambiguous, uncertain, or doubtful. *Winningham v. Harris*, 64 Ark.App. 239, 981 S.W.2d 540 (1998).

4. Under the Arkansas Trust Code, a trust is only created if:

> The settlor has capacity to create a trust;
>
> The settlor indicates an intention to create a trust;
>
> The trust has a definite beneficiary;
>
> The trustee has duties to perform; and
>
> The same person is not the sole trustee and sole beneficiary.

Ark. Code Ann. § 23-73-402(a). The Trust Code therefore directs that trusts may only be created by the settlor/owner of the alleged trust property who demonstrates an intention to create a trust.

5. With respect to conveyances of real property in general, the Arkansas General Assembly forbids the creation of trusts through deeds of conveyance that employ the term "trustee" to describe the grantee:

> Deed to trustee or agent.
>
> (a)(1) The appearance of the words 'trustee', 'as trustee', or 'agent' following the names of the grantee in any deed of conveyance of land executed, without other language showing a trust, shall not be deemed to give notice to, or put on inquiry, any person dealing with the land that a trust or agency exists or that there are other beneficiaries of the conveyance except the grantee named therein.
>
> (2) The conveyance shall vest the title to the land in the grantee.

Ark. Code Ann. § 18-12-604.

6. However, with regard to religious societies, Ark. Code Ann. § 18-11-201 authorizes the conveyance of up to forty acres to a person as a trustee for a religious society "within this state" for a meeting house, cemetery, parsonage, etc. By its terms, Section 18-11-201 does not sanction any conveyance in trust

for a religious organization outside of this state, such as the National A.M.E.

/s/ John B. Plegge
The Honorable John B. Plegge,
Special Pulaski County Circuit Judge

Dated: July ____, 2007

**IN THE CIRCUIT COURT OF
PULASKI COUNTY, ARKANSAS
SECOND DIVISION**

**NEW DIRECTION
PRAISE AND WOR-
SHIP CENTER, INC.**

vs. **PLAINTIFF**

NO. CV-06-8690

**ARKANSAS ANNUAL
CONFERENCE OF
THE AFRICAN METH-
ODIST EPISCOPAL
CHURCH, INC. and
THE AFRICAN METH-
ODIST EPISCOPAL
CHURCH, INC.** **DEFENDANTS**

**ARKANSAS ANNUAL
CONFERENCE OF
THE AFRICAN METH-
ODIST EPISCOPAL
CHURCH, INC.** **COUNTER-CLAIMANT**

vs.

**NEW DIRECTION
PRAISE AND WOR-
SHIP CENTER, INC.,
DARRYL L. BAILEY;
LLOYD WORTHY;
and VIVIAN NOONER** **COUNTER-DEFENDANTS**

JUDGMENT

(Filed Jul. 12, 2007)

On the 25th day of June 2007, this cause came on to be heard, the plaintiff appearing through its representative Brenda Webb and by its attorney, Roger D. Rowe, defendants appearing through their representatives, Elder Eugene Brannon and bishop Richard Chappelle and by their attorneys David O. Bowden, Rickey H. Hicks, and Christopher C. Mercer Jr., and counter-defendant Vivian Nooner appearing in person and through her attorney, Roger D. Rowe, and all parties announcing ready for trial, the Court conducted a trial of the issues of fact arising herein. After hearing the opening statements of counsel, receiving the testimony into evidence presented on behalf of all parties, and hearing the arguments of counsel, the court announced the following:

(1) That the plaintiff shall prevail on its amended complaint and on the amended counterclaim of the defendant Arkansas Annual Conference of the African Methodist Episcopal Church, Inc.;

(2) That the plaintiff is entitled to the ejectment of the defendants from the subject real property, to title to the subject real property, to replevin of the personal property located on the subject real property, and to replevin of the 1999 Dodge van; and

(3) That the third-party defendants shall prevail on the amended counterclaim and third-party

complaint of defendant Arkansas Annual Conference of the African Methodist Episcopal Church, Inc.

The defendants subsequently moved for findings of fact and conclusions of law pursuant to Ark. R. Civ. P. 52. The Court has entered its findings and conclusions in conformity with said Rule.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

(a) That the defendants shall immediately surrender to the plaintiff possession of the subject real property located in Pulaski County, Arkansas, and commonly known as 2311 Bailey Road, Little Rock, Arkansas:

> Starting at the existing NW corner of the NE 1/4 of the NW 1/4, Section 21, Township 1 South, Range 12 West, Pulaski County, Arkansas, and run thence East 158.7 feet to the point of beginning; from the point thus established run thence South 208.7 feet; thence East 158.7 feet; thence North 208.7 feet; thence West 158.7 feet to the point of beginning, containing ¾ acres, more or less (the "Real Property").

(b) That title to said Real Property shall be confirmed and quieted in the plaintiff, and that the defendants shall have no right, title, or interest in or to the Real Property;

(c) That the defendants shall immediately deliver to the plaintiff possession of the personal property located in and on the Real Property;

(d) That the defendants shall immediately deliver to the plaintiff possession of a 1999 Dodge van, VIN 2B5W835Z3XK556981, as well as the instrument of title therefore;

(e) That the amended counterclaim and third-party complaint of the defendant Arkansas Annual Conference of the African Methodist Episcopal Church, Inc. are dismissed;

(f) That if possession of the aforementioned Real Property and personal property be not delivered to the plaintiff within ten (10) days as provided in Ark. R. Civ. P. 62(a), all writs for assistance, possession, and replevin shall issue hereon immediately; and

(g) That each party shall bear its own costs and attorney's fees.

IT IS SO ORDERED this 6 day of July 2007.

/s/ John B. Plegge
The Honorable John B. Plegge,
Special Pulaski County Circuit Judge

PLEAS
BEFORE
THE HONORABLE CHRIS PIAZZA,
JUDGE OF THE PULASKI COUNTY
CIRCUIT COURT, SECOND DIVISION

IIAD

FEBRUARY 15TH, 2007

&

MAY 21ST, 2007

&

JUNE 25TH, 2007

&

SEPTEMBER 10TH, 2007

IN THE CASE OF:

NEW DIRECTIONS [sic] PRAISE AND WORSHIP CENTER, INC.	PLAINTIFFS
VS. NO. CIV-06-8690	
ARKANSAS ANNUAL CONFERENCE OF THE AFRICAN METHODIST EPISCOPAL CHURCH, INC. AND AFRICAN METHODIST EPISCOPAL CHURCH, INC., A PENNSYLVANIA CORPORATION	DEFENDANTS-COUNTER-CLAIMANTS

NEW DIRECTIONS [sic]
PRAISE AND WORSHIP
CENTER, INC.;
DARYL [sic] L. BAILEY,
LLOYD WORTHY;
VIVIAN NOONER COUNTER-DEFENDANTS

BE IT REMEMBERED, that on this 25th day of June, 2007, before HONORABLE JOHN PLEGGE, Special Judge for the HONORABLE CHRIS PIAZZA, Circuit Judge of the Second Division Circuit Court of Pulaski County, Arkansas, the above-styled cause came on for transcription of the hearing held in the Pulaski County Courthouse, as follows:

APPEARANCES

ON BEHALF OF PLAINTIFFS:

Roger D. Rowe
Attorneys at Law
Cantrell West Bldg.
11300 Cantrell Road,
Suite 201
Little Rock, AR 72212

ON BEHALF OF DEFENDANTS:

Christopher C. Mercer, Jr.
Attorney at Law
2501 South Broadway
Little Rock, AR 72206

ON BEHALF OF THE DEFENDANTS:

RICKEY H. HICKS
Attorney at Law
523 S. Louisiana,
Suite M-100
Little Rock, AR 72201

ON BEHALF OF THE DEFENDANTS:

DAVID O. BOWDEN
Attorney at Law
P.O. Box 193101
Little Rock, AR 72219

* * *

[235] a religious society in this state. The National Church never even came into this state. They want to have their cake and eat it too. They want the benefits of the property, want to claim possession and control of the property, but they don't have any legal obligation for upkeep. And if there is an underground storage tank buried on it, we're going to raise the flag, "it's not ours; it's just merely in trust for us." "It belongs to that local entity, sue it to clean this up." "Don't tag us with that liability." Here, they want their cake and eat it too. They want that separation but then they want possession, control and ownership of the property. No. Their own documents at most gives them a trust relationship. But under Arkansas law and the Arkansas Trust Code, it never happened because an owner never granted the trust. Thank you.

[COURT'S RULING.]

THE COURT: All right. Thank you. First off, I want to compliment all the counsel in this case. It's been a well-tried case. As a Judge, I appreciate that and I thank you for that. It's been a well-pled case. I've gone [236] through the pleadings and I've read all the pleadings in the case. And it appears that counsel have gotten along well during your discovery. But now, I have to make the difficult decision as to what should happen, based upon what I have heard here today and the briefs you've written and the pleadings.

Counsel, it appears to me that there were two rather loosely run organizations that had a rather loosely run relationship from 1981 to 2005. And that then it was terminated by another loosely terminated agreement, if you will, although there wasn't one, as such. But there's been a whole lot of testimony about the connectional church and what its rules and requirements are but there's never been anything introduced to show when that relationship – or what that relationship was, other than one was a church and one was the mother church. And I don't know what that connection is. I don't know what the requirements for each were. There was a consideration paid of $5.00. I've seen the cashier's check. That was paid. Now whether it's been cashed or not, I don't know, but the [237] check has been paid. There was consideration paid for that. So I think what has happened here is that two loosely run organizations got along together real well until the church itself lost members. And when they got down to where they had $1.26 in the bank and asked for help, the mother church said, "Well, you need to pray about it." And it was after that that, apparently, their prayers were not answered because they decided to go somewhere else and see if they couldn't do this on their own, as opposed to having to pay monies to the A.M.E. Church.

So, I think because of those reasons that the Plaintiff should prevail in this. The title should be quieted in the – what was the name of the last –

MR. ROWE: New Direction Praise and Worship Center, Incorporated.

THE COURT: – New Directions [sic] Center, and that they should be given the keys to the van back, and that each party will pay their own fees and costs in the matter. And, Mr. Rowe, if you would prepare a precedent reflecting the Court's findings in the case. [238] Any further requests to the Court?

And let me say this, folks: these are not easy decisions to make and I don't like having to make decisions like this. Bishop, you did a great job. Elder Brannon, you do a great job. And it's not pleasant to find sometimes against people that are good folks and do a good job. I just think in this particular instance that the Plaintiff should prevail in the case. And, you know, I've been wrong before and the Supreme Court has told me when I was and I accepted that. I'm not suggesting that this be appealed, but there's always that relief.

All right. Then anything further? If not, we stand adjourned. Thank you.

* * *

(End of testimony.)

* * *

The
Doctrine
and
Discipline
of the
African Methodist Episcopal
Church
2000-2004

CERTIFIED COPY OF CHARTER

RECORDED in the Office for the Recording of Deeds for the County of Philadelphia, in Charter Book No. 128, Page 229 etc.

Witness my hand and Seal of Office this 17th day of December, A.D. 1936.

DAVID W. HARRIS,
Recorder of Deeds,

By ERNEST T. WRIGHT.
Deputy Recorder

The other and further powers and purposes of the African Methodist Episcopal Church Corporation, hereinafter termed the "Church," are as follows:

1. To be a non-profit corporation as prescribed by Section 501(c)(3) and subsequent amendments, of the Internal Revenue Code, United States of America.

2. To conduct religious, missionary and educational services, activities and projects.

3. To direct, supervise, oversee, protect, and preserve the fiscal matters and affairs of the Church.

4. To delegate such activities, operation, and duties respecting the financial and budgetary affairs of the total Connectional Church to the General Board, subject to the approval of the General Conference.

5. To hold in trust all real, personal, and mixed property interest and rights of the Church, whether general or local in character, or titled in any department, society, agency, auxiliary or board. The Board of Incorporators, or General Board of Trustees, herein shall be amenable to the General Conference of the Church.

   No personal or real property, movable or immovable, or mixed, corporeal, or incorporeal, or other thing of value, not held by or under the jurisdiction of an Annual Conference of the A.M.E. Church, shall be sold, donated, mortgaged, conveyed, transferred, abandoned and/or encumbered without the written approval of the Board of Trustees, that is the Board of incorporators of the African Methodist Episcopal Church.

   Notice is hereby given to whom it may concern that the right, power and authority to sell, donate, mortgage, convey, transfer, abandon, or encumber personal or real property, movable or immovable or mixed, corporeal, or anything of value not held by or under the jurisdiction of an Annual Conference of the

A.M.E. Church, lies solely and exclusively under the jurisdiction and administration of the Board of Trustees/the Board of Incorporators of the African Methodist Episcopal Church.

6. The Board of Trustees to be protected shall select, designate and retain General Counsel for the Church, who shall become competent to represent it in furtherance of its duties, wherein the property rights and other interests of whatever kind shall be protected.

7. The Board of Trustees is the legal representative of the Church. Accordingly, it may sue, be sued in matters wherein the fiscal or property matters or interest or rights of the Church are concerned.

8. It shall be the duty of the Board of Trustees to quiet any claim, title, dispute asserted by any person, local church, society, auxiliary, agency, department, or commission which shall be deemed adverse to the general Church, or the General Conference; including all property to the Church whether held In Trust or which may be conveyed to, or committed to, or for the benefit of the Church, its members, society, auxiliaries, departments, boards, and commissions, wheresoever located.

9. This Board reserves to the local church, society, departments, commission, local trustee boards the right as stated in *The Doctrine and Discipline of the African Methodist Episcopal*

Church for such transaction and applicable state law.

10. This corporation, by its Board, shall hold In Trust all bequests, gifts, grants, donations and funds that may be given or conveyed directly to the African Methodist Episcopal Church, or its trustees, incorporators for the benefit of persons, local congregations, departments, auxiliaries, commissions, and boards of the church.

11. It is understood that said Corporation herein shall not be required to accept any property, gift, grant, donation, not in harmony with the purposes and intent of said Church, or which may be in conflict with *The Doctrine and Discipline of the African Methodist Episcopal Church*.

12. The duly elected Secretary and Treasurer of the Church shall be non-voting members of the Board of Trustees. The presiding or resident bishop of the First Episcopal District and a minister and a lay person who are residents of Pennsylvania will be on each board. The duly designated bishop over the district which shall include Philadelphia shall be the Registered Agent for the Board of Incorporators.

13. The address of the Corporation shall be the Office of the Presiding Bishop of the Episcopal District which shall include Philadelphia, PA.

14. The Trustees (formerly the Board of Incorporators) shall be selected by the General Conference, and known as the Trustees of the African Methodist Episcopal Church, Inc., with corporate headquarters at Philadelphia, PA; that such persons must have the following qualifications:

    a. Be a member of the Church in active status.

    b. Be at least twenty-one years of age.

    c. Be free of any interest in conflict with the property, or general welfare of the Church.

    d. Be free of legal transactions or projects which may bar full participation in the business and property matters pertaining to the general Church.

15. Each General Conference shall elect the panel of Incorporators to serve as the Board of Incorporators for a term of four years, provided, however, that no person shall be elected to serve on the Board of Incorporators for more than two (2) consecutive terms.

16. That vacancies occurring in the interval of "the General Conference shall be filled for the rest of the Quadrennium by the Council of Bishops.

17. That the number of Trustees (formerly the Board of Incorporators) shall be a minimum

of nine, and each Board shall consist of an odd number.

18. Three (3) members: one (1) bishop, one (1) minister, and one (1) lay person elected for a four (4) year-term.

    Three (3) members: one (1) bishop, one (1) minister, and one (1) lay person elected for an eight (8) year-term.

    Three (3) members: one (1) bishop, one (1) minister, and one (1) lay person elected for a twelve (12) year-term.

    The Board shall organize itself immediately following each General Conference. It shall elect one of the bishops on the Board as its Chairperson. The Chairperson shall not vote except to break a tie.

19. That the Board of Incorporators shall within one year of the meeting of the General Conference enact appropriate by-laws to guide it in its work and deliberations.

    That this Board is directed to meet at least annually and at such other times as may be deemed proper.

20. When civil action is brought against the Church or any department thereof by any member, thereof prior to the exhaustion of the remedies provided in *The Doctrine and Discipline of the African Methodist Episcopal Church* the Board of Incorporators shall immediately pursue such injunctive relief as may be appropriate by indicating to the court

having jurisdiction over that matter that the A.M.E. Church has provided in *The Doctrine and Discipline of the African Methodist Episcopal Church* the legal matter to settle church disputes among its membership and/or departments.

21. The Board of Incorporators of the A.M.E. Church shall have a registered agent in every state of the country where the A.M.E. Church exists. The registered agent shall be registered with the Office of the Secretary of State or comparable office where there are A.M.E. Church properties or churches.*

    The registered agent shall receive all legal complaints, suits, or other documents concerning A.M.E. Church properties or other matters involving the A.M.E. Church. It shall be the duty of the registered agent to notify the Chairperson of the Board of Incorporators, the Presiding Bishop of the Episcopal District and the General Counsel of the A.M.E. Church The Chairperson of the Board of Incorporators, in conjunction with the Presiding Bishop of the affected District and General Counsel shall, within forty-eight (48) hours of receiving such notice, initiate appropriate action to defend all such matters.

    Each Annual Conference In every Episcopal District of the A.M.E. Church shall be incorporated. All properties located in each Episcopal

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* Pending compliance with laws of Pennsylvania

> District of the A.M.E. Church shall be held in the name of the corporate entity in which it is located, Where such property is not located or in the name of an incorporated Annual Conference, the property shall be held IN TRUST by the Trustees of the local church for the benefit of the African Methodist Episcopal Church, as already provided in *The Doctrine and Discipline of the African Methodist Episcopal Church.*

The names and addresses of the Trustees and Officers of the African Methodist Episcopal Church, Incorporated, (formerly known as the Board of Incorporators of the African Methodist Episcopal Church) are as follows:

BISHOPS

Bishop Philip Robert Cousin, Sr. President/Chairman	[Address Omitted] (773) 373-6587—Office (773) 373-8356—FAX
Bishop John Hurst Adams Vice-President/ Vice Chairman	[Address Omitted] (904) 355-8262—Office (904) 356-1617—FAX
Bishop Donald George Kenneth Ming Registered Agent	[Address Omitted] (215) 662-0506—Office (215) 662-0199—FAX

MINISTERS

Rev. Carl D. Ogden, Sr. Chaplain	[Address Omitted] (215) 848-4007—Office (215) 848-9420—FAX
Rev. Larnie G. Horton	[Address Omitted] (919) 782-4803—(Week) Office (919) 732-3472—(Weekend) (919) 781-1865—FAX
Rev. John A. Mainor	[Address Omitted] (407) 291-1385—Office (407) 291-3731—FAX

LAYPERSONS

Dr. Jamye Coleman Williams Secretary	[Address Omitted] (615) 254-7183 (615) 254-7183—FAX (Call first) email: JMACAME@aol.com
Ms. Margaret Ann Fields Assistant Secretary	[Address Omitted] (419) 472-8494 (419) 472-8494—FAX (Call first)
Attorney Richard Sinkfield Treasurer	[Address Omitted] (404) 522-4700—Office (404) 525-2224—FAX

EX-OFFICIO

Dr. Clement W. Fugh General Secretary/*CIO*	[Address Omitted] (615) 254-0911—office (615) 254-0912–FAX (615) 419-5757—Cell e-mail: cioamec@bellsouth.net
Mr. Richard Allen Lewis Treasurer/*CFO*	[Address Omitted] (202) 371-8700—Office (202) 371-8735—FAX and [Address Omitted] (615) 353-6386
Attorney William A. Marsh, Jr. General Counsel	[Address Omitted] (919) 688-2374—Office (919) 688-2376—FAX

AuxIISection II. GENERAL CHURCH PROPERTY

A. Purchase, Transfer

The African Methodist Episcopal Church, Inc., is organized and functions solely as a connectional church. The title(s) to all real, personal and mixed property held at the General, Annual Conference level or by the local churches, shall be held IN TRUST for the African Methodist Episcopal Church, Inc., and subject to the provisions of *The Doctrine and Discipline of the African Methodist Episcopal Church.*

However, the absence of an IN TRUST clause as indicated herein, in deeds, and

documents of conveyances previously executed shall not exclude a local church from or relieve it of its Connectional character and responsibilities to the African Methodist Episcopal Church, Inc., nor shall the lack of the IN TRUST phrase excuse or absolve a local congregation, church agency or Board of Trustees of its responsibilities and accountability to the African Methodist Episcopal Church, Inc., provided, the intent and desires of the founders and of the later congregations or Board of Trustees have all demonstrated the following conduct:

1. Use of the name, customs, polity, or literature of the A.M.E. Church, Inc., in such a manner as to be known as a part of the A.M.E. Church connection.

2. Conveyance of said property to the trustees of a local church or agency to the A.M.E. Church, Inc.

3. The acceptance of the pastorate of ministers appointed by a bishop of an episcopal district or annual conference of the A.M.E. Church, Inc.

4. The payment of conference assessments or dues.

5. The participation and enrollment of the church as a member of the connection of the A.M.E. Church, Inc., by said local church in the Quarterly Conference and the Annual Conferences.

B. Local Church Property – Transfer of Property

The Board of Trustees, duly elected by the local church as provided by *The Doctrine and Discipline* of *the African Methodist Episcopal Church,* may take such steps to purchase, mortgage, sell, transfer and convey real and personal property, PROVIDED that such transfer has been duly approved by the resolution in Quarterly Conference of the said church, and also by the trustees of the Annual Conference in which the property is located, and of which the presiding bishop is president.

The Board of Trustees of the local church holds the property IN TRUST for the General Church and not in their individual capacities. When the local church shall be incorporated, all property – real, personal, or mixed – shall be deeded to it in its corporate name, IN TRUST for the African Methodist Episcopal Church, Inc.

The local church corporation shall have the power to sell, convey and dispose of both real and personal property as directed by *The Doctrine and Discipline of the African Methodist Episcopal Church*. The proceeds of/from the sale of any local church property shall be held IN TRUST for the African Methodist Episcopal Church or disbursed for another improvement of other property owned by it, or to be purchased by it. No property shall be

sold except with the approval of the Quarterly Conference, by Resolution.

C. Mortgaging Property

The Board of Trustees and Incorporators of the local church, elected, and organized as prescribed in *The Doctrine and Discipline of the African Methodist Episcopal Church,* shall have the power to mortgage or encumber the property of the local church or corporation, PROVIDED such action has been authorized by majority vote of the membership present in a duly called Church Conference for this specific purpose. It shall be required that NOTICE of such meetings must be given fourteen (14) days previously, including two (2) Sundays, and such action must be approved by Resolution in a regular session of the Quarterly Conference. (Wherever these laws conflict with the laws of the state in which the property is located, the pastor and the Trustees shall proceed in a manner to conform with these laws).

D. Abandoned Property

If any church property is abandoned in consequence of the disbanding of the society, the title of said property shall be vested in the Annual Conference in which it is located. Said property shall be sold by the Annual Conference Trustees and the proceeds deposited in the Annual Conference treasury, to be used for mission work and church extension

in the conference in which said property is located. The funds shall be disbursed by the direction of the conference committee on church extension, with the approval of the Annual Conference. A duplicate record of the transaction shall be deposited with the General Secretary of the African Methodist Episcopal Church.

E. Form of Deed

BE IT KNOWN AND REMEMBERED that on this day of _____, year of our Lord _____. We, the below named Trustees of the church, a duly organized religious body, in the presence of the witnesses, who have joined this the Notary Public in affixing our signatures hereto:

BY THESE PRESENTS WITNESSETH:

That the church is a not-for-profit religious congregation under the laws of the State of _____. That the said Church is a local church of the African Methodist Episcopal Church, as set forth by *The Doctrine and Discipline of the African Methodist Episcopal Church,* and amended, and is therefore subject to the General Conference of the African Methodist Episcopal Church, and connected with the _____ District of the _____ Annual Conference of the _____ Episcopal District, African Methodist Episcopal Church, Inc., all in accordance with and as set forth in the latest edition of *The Doctrine and Discipline of the African Methodist Episcopal Church.*

BY THESE PRESENTS the connectional and local affiliation of this church is affirmed for posterity. It is the intention of the Trustees to declare, without any reservation whatsoever, that all of the actions taken by the church, in the past and forever, are in keeping with and in obedience to *The Doctrine and Discipline of the African Methodist Episcopal Church*, as amended.

Our affiliation and participation in the ritual and *The Doctrine and Discipline of the African Methodist Episcopal Church* have continued uninterruptedly since _____. This affirmation is made necessary since the instruments denoting title to movable and immovable property belonging to this church, named and identified herein above, fail to take into account the historical affiliations of the congregations of this church, from time immemorial and beyond. And further, said instruments are devoid of declarations appropriate to compliance with Part III: Section B: "General Church Property," defined by and delineated in the 1988 *The Doctrine and Discipline of the African Methodist Episcopal Church.*

BY THESE PRESENTS, we, all of us, solemnly declare, undertake and ordain this Act for ourselves and our posterity.

WITNESSES: THE TRUSTEES:

_____ _____

_____ _____

_____NOTARY PUBLIC

ATTESTATION

I, _____,
Pastor of the _____
A.M.E. church, do by these presents declare that there is currently a duly constituted Board of Trustees, consisting of _____ members and that of the indicated above, _____ are present and participating.

_____
PASTOR

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever, IN TRUST for the A.M.E. Church, Inc., and the grantor hereby covenants with the said grantee that the grantor has good right and lawfully seized of said land in fee simple; that the grantor hereby fully warrants the title to said land and will defend the same against the unlawful claims of all persons whomsoever; and that said land is free of all encumbrances, except current taxes.

Note: (Deed)

The foregoing SAMPLE DEED appropriate to transfer or convey local church property is subject to the law and legal requirements of the particular state wherein the property is located.

The following language, however, must be included in the Deed:

"To have and to hold, IN TRUST, the aforesaid land, tract, privileges, and appurtenances belonging thereto, that said premises shall be used, kept, and maintained as a place of divine worship for the use of the ministry and membership of the African Methodist Episcopal Church, Inc., subject to *The Doctrine and Discipline of the African Methodist Episcopal Church,* usage, and ministerial appointments of said church, as from time to time may be authorized and declared by the General Conference of the said church and the Annual Conference in which bounds the said premises are situated. It is provided, however, that no pastor, no Trustee Board shall mortgage or sell any property of the African Methodist Episcopal Church, Inc., without the written consent of the Bishop of the Episcopal District and the Annual Conference where the property shall be located."

We, the undersigned

Rev. _____ _____
(Pastor) (Address)

_____ _____
(Trustee) (Address)

_____ _____
(Trustee) (Address)

elected by the membership or members of the congregation of the

_____
(Local Church)

on _____, to act as trustees and officers
(date)

in the name and on behalf of said congregation, each being at least eighteen (18) years of age.

* * *

and action, the vote to be taken in the manner as outlined above (see paragraph 3) and the results of the action to be reported within five days following the meeting.

7. The Extra Session of the General Conference shall assemble at the time and place consented to by the Annual Conferences. The Senior Bishop shall preside, or in the event of his/her failure or inability to act, the next ranking bishop present shall act, in his/her stead. In the event that the next ranking bishop fails or is unable to act, the succession shall follow according to seniority. The secretary of the General Conference shall call the roll of the members of the last General Conference; and if a majority of the members of the last General Conference answer "Present" at the roll call, the presiding officer shall declare the General Conference duly and lawfully assembled.

The Extra Session shall immediately elect such officers and committees necessary to expedite the business of the call.

8. After the business of the call shall have been completed, should there be vacancies in the office of bishop, the Episcopal Committee shall assign the necessary number of bishops to fill the vacancies; in so doing, the Episcopal Committee shall have full authority to remove or transfer any bishop from the district to which the previous General Conference may have assigned him/her. This authority shall not be delegated to the Council of Bishops.

9. The lay and ministerial delegates to the Extra Session shall be provided travel and sustentation in the same manner as for the quadrennial meeting.

10. If any Annual Conference should be without representation, on receiving notice of the Extra Session, the bishops, or, if there are no bishops, three elders of the conference shall call it to an extra session where it shall elect both ministerial and lay delegates.

Section II. THE ANNUAL CONFERENCE

A. Composition and Function

1. The Annual Conference shall be composed of all Traveling Elders, Deacons, and Licentiates and all Local Elders and Local Deacons; Presidents of the Conference Lay Organization, Missionary Society; Conference Director of Christian

Education and YPD Director, together with one lay member from each charge within its bounds. The traveling expenses of the lay members shall be paid by their respective charges. Visiting members from any other Annual Conferences in the Connection may participate in debates but shall not vote.

2. Every Annual Conference of the A.M.E. Church shall be incorporated. In those instances where the conferences cover more than one state, the incorporation will be in the state of our larger membership.

3. The Annual Conference, so incorporated, shall be a legal and sovereign body.

4. Every Annual Conference Trustee shall review the recommended new work and give leadership in the establishment of priorities for resources allocation.

5. The presiding bishop of the episcopal district in which an Annual Conference is located shall be the President of the Annual Conference.

6. Although each Annual Conference may vote open or close an Annual Conference on any day within a seven (7) consecutive day period, the bishop shall choose the number of days for each session, but not to exceed five (5) consecutive days.

7. Each episcopal district shall, at its first Planning Session, by majority vote, set

the opening and closing days of the Annual Conference within the boundaries of the district. The bishop shall set the number of days for each session, which shall be binding for the entire quadrennium.

8. No special mid-year or extra session of any Annual Conference shall be called or held except for the purpose of: (1) deciding some question affecting the property rights of the Annual Conference or the Connection, which in the judgment of the bishop, warrants immediate consideration and action, or (2) voting on the question of an Extra Session of the General Conference as provided under law governing extra sessions of the General Conference.

* * *

east boundary is U.S. Highway 301 from Wildwood through Dade City to its intersection with U.S. Highway 98, follow an imaginary line south to Mulberry, follow an imaginary line southeast from Mulberry to Sebring. The southern boundary is an imaginary line from Sebring southwest to Ft. Meyers. The west boundary is the Gulf of Mexico.

8. *Bahamas Conference* – The churches in the Bahama Islands.

L. Twelfth District

1. *Oklahoma Conference* – The Oklahoma Conference comprises the counties of Oklahoma, Pottowatamie, Cleveland, Kay, Pawnee, Logan, Canadian, Kingfisher, Garfield, Grady, Cotton, Comanche, Tilman, Lincoln, and Payne.

2. *Central Oklahoma Conference* – The Central Oklahoma Conference comprises the counties of Tulsa, Muskogee, Seminole, Okfuskee, Creed, Okmulgee, Carter, Choctaw, McAlister, and Pittsburg.

3. *Arkansas Conference.* – The Arkansas Conference comprises that part of the Sate [sic] north of the baseline and west of the Fifth Principal Meridian and that of Pulaski County, South of the baseline except no part of Monroe, Lee, nor St. Francis counties, but include Craighead, Poinsett, Mississippi, and Woodruff counties.

4. *South Arkansas Conference* – The South Arkansas Conference comprises Bradley, Drew, Lincoln, Chicot, and Ashley counties; that part of Desha County west of the Arkansas River; Harrell and Mt. Pleasant Circuits in Calhoun County, also Callion in the Calhoun County. Also Jefferson County east to the Arkansas River and north to Dexter and west to the Grant County line, parallel to direct line forming the eastern boundary of the West Arkansas Conference.

5. *West Arkansas Conference* – The West Arkansas Conference comprises the northeast corner of said conference which begins at the Saline County Line of the Rock Island Railroad, running south of Little Rock, Arkansas, to Louisiana as far south as Bunn, Arkansas, in Dallas County; thence due west to Manning, Arkansas, on the

* * *

Quitclaim Deed

THIS QUITCLAIM DEED executed this 17th day of November, 2005, by first party, Grantor, The Trustees of Sand Hill A.M.E. Church whose post office address is 2311 Bailey Road, Little Rock, Arkansas 72206 to second party, Grantee, New Direction Praise and Worship Center Inc whose post office address is 13822 Judge Lane, Little Rock, Arkansas 72206

WITNESSETH, That the said first party, for good consideration and for the sum of Five Dollars and No/100 Dollars ($5.00) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Pulaski. State of Arkansas to wit:

> Starting at the existing N.W. corner of the N.E. 1/4 of the N.W. 1/4, Section 21, Township 1 South, Range 12 West, Pulaski County, Arkansas, and run thence East 158.7 feet to the point of beginning; from the point thus established run thence South 208.7 feet thence East 158.7 feet; thence North 208.7 feet; thence West 158.7 feet to the point of beginning, containing 3/4 acre, more or less,

IN WITNESS WHEREOF, the said party has signed and sealed these presents the day and year first

above written. Signed, sealed and delivered in presence of:

Signature of Witness: /s/ Charles E. Bell

Print name of Witness: _____

Signature of Witness: _____

Print name of Witness: _____

Signature of First Party: /s/ Darryl L. Bailey, /s/ Lloyd Worthy, /s/ Vivian Nooner

Print name of First Party: Darryl L. Bailey, Lloyd Worthy, Vivian Nooner

Signature of Second Party: /s/ Kenneth Smith, /s/ Brenda Webb

Print Name of Second Party: Kenneth Smith, Brenda Webb

Signature of Preparer: /s/ Alonzo Redic III

Print Name of Preparer: Alonzo Redic III

Address of Preparer [Address Omitted]

State of Pulaski }
County of Arkansas }

On 11-17th-05 before me, Charles E. Bell, appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),

and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

/s/ Charles E. Bell
Signature of Notary

Affiant _____ Known _____
Produced ID

Type of ID_____

(Seal)

OFFICIAL SEAL
CHARLES E. BELL
NOTARY PUBLIC-ARKANSAS
PULASKI COUNTY
MY COMMISSION
EXPIRES: 06-04-2011

[SEAL OF THE CIRCUIT COURT]

Minutes from October 9, 2005 Meeting

Opening Song: "We Are Often Tossed & Driven"
Prayer: Rev. Lloyd Worthy
Scripture: Matthew 16:13-18

The meeting was called to order by Rev. Alonzo Redic III.

Minutes from the last meeting was read by Sis. Mary Worthy. Rev. Redic asked all in favor of accepting the minute as read do by saying "I". Sis. Vivian Nooner moved that we accept the minutes as read and Sis. Joyce Jenkins second the motion.

Rev. Redic said that he asked in our last meeting for all of us to pray and fast about this meeting. He stated that "everyone here knows that he has no plan of returning to the Arkansas Annual Conference this year."

We are here today for a very, very important meeting. Today we are here to discuss our position with the African Methodist Episcopal Church. Several of the members stated that after our last financial report was read during our Quarterly Conference, Presiding Elder Brannon did not seem concern that we only had a little over a dollar in our treasure. They were concern because with only a hand full of members there was no way we can come up with the money for our budget. Sis. Webb said "she question Presiding Elder about why our budget is so high, and he did not have a satisfactory answer for her other than the amount of members on our roll help determine the about of money assessed to each church. Sis. Webb

told him that we only had 10 tithing members at our church that are on the roll."

Sis. Mary Worthy stated that "it seems like the Bishop and Presiding Elder of the AME (African Methodist Episcopal) Church are only concern with whether or not a church can make their budget and not concerned about souls being saved or how they can help support the small churches in their district.

Rev. Redic III stated that he spoke with Presiding Elder Brannon during our Quarterly Conference about our finances, and he was told by the Elder to quote "Pray About It."

Rev. Redic III stated that we are here to vote on whether or not we as a church family body want to continue to be a part of the African Methodist Episcopal Church. Pastor Redic III asked all in favor of disassociating ourselves from the African Methodist Episcopal Church do so by saying "I". Everyone said "I". Bro. Daryl Bailey moved that we as a church body disassociate ourselves from the African Methodist Episcopal Church, and Sis. Mary Worthy second that motion. The following members were present for the meeting and made their vote known:

Rev. Alonzo Redic III
Rev. Lloyd Worthy
Sis. Mary Worthy
Bro. Frank Bailey
Sis. Treopia Jenkins
Sis. Joyce Jenkins
Sis. Vivian Nooner

Sis. Sonja Chalk
Sis. Brenda Webb
Bro. Kenneth Smith

Rev. Redic asked that we all start thinking about the foundation of our new church and we will discuss it during our next meeting.

Meeting was adjourned. . . .

No. 08-1352

Supreme Court, U.S.
FILED
JUN 3 - 2009
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

ARKANSAS ANNUAL CONFERENCE OF THE AFRICAN METHODIST EPISCOPAL CHURCH, INC., an Arkansas Corporation, and THE AFRICAN METHODIST EPISCOPAL CHURCH, INC., a Pennsylvania Corporation,

Petitioners,

v.

NEW DIRECTION PRAISE AND WORSHIP CENTER, INC., an Arkansas Corporation,

Respondent.

On Response to Petition for Writ of Certiorari To The Supreme Court of Arkansas

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI

ROGER D. ROWE
AR Bar No. 85140
Counsel of Record
LAX, VAUGHAN, FORTSON,
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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 3

ARGUMENT 4

I. THE ARKANSAS COURTS ADJUDICATED THIS CASE UNDER NEUTRAL PRINCIPLES OF STATE LAW AND DID NOT REACH THE ISSUE OF "RELIGIOUS DOCTRINE" PRESENTED BY THE PETITIONERS 4

II. THE ARKANSAS COURTS PROPERLY EXCERCISED JURISDICTION OVER THIS CASE AND DECIDED IT UNDER NEUTRAL PRINCIPLES OF ARKANSAS LAW 6

III. COURSE OF DEALING WAS NOT RAISED BELOW AND PRESENTS NO ISSUE OF FEDERAL LAW 13

CONCLUSION 14

SUPPLEMENTAL APPENDIX ..... S. App. 1

TABLE OF AUTHORITIES

CASES

African Methodist Episcopal Church, Inc. v. St. Johns African Methodist Episcopal Church, 2009 Ohio 1394 (Ohio Ct. App., Fifth Div. 2009) 10,12

Arkansas Presbytery of the Cumberland Presbyterian Church v. Hudson, 344 Ark. 332, 40 S.W.3d 301 (2001) 7

Cumberland Presbytery v. Branstetter, 1992 Ky. LEXIS 28, 824 S.W.2d 417(Ky. 1992)..... 10,11

Episcopal Church Cases, 45 Cal. 4th 467, 198 P.3d 66 (Cal. 2009)..... 10,11

Episcopal Diocese v. Harnish, 11 N.Y.3d 340, 899 N.E.2d 920 (N.Y. Ct. App. 2008)..... 10,11

Farmers & Merchant's Bk. v. Deason, 25 Ark. App. 152, 752 S.W.2d 777 (1988) 8

From the Heart Church Ministries v. Philadelphia Baltimore Annual Conference, 184 Md. App. 11, 964 A.2d 215 (Ct. Spec. App. 2009)..... 10,12

Jones v. Wolf, 443 U.S. 595 (1979)..... 3,6,7,10,12

Lemon v. Kurtzman, 403 U.S. 602 (1971)..... 10

North Central New York Annual Conference v. Felker, 816 N.Y.S.2d 775, 28 A.D.3d 1130 (N.Y. App. Div. 2006)..... 10,12

St. Paul Church, Inc. v. Board of Trustees of the Alaska Missionary Conference of the United Methodist Church, Inc., 2006 Alas. LEXIS 156, 145 P.3d 541 (Alaska 2006)..... 10,11

STATUTES

Ark. Code Ann. § 4-2-202(a) (2007 Supp.)..... 13

Ark. Code Ann. § 18-12-604(a)(1) 8

Ark. Code Ann. § 18-12-604(a)(2), (b) 8

Ark. Code Ann. § 18-11-201 9

Ark. Code Ann. § 28-73-101, *et seq.* (2007 Supp.) 9

Ark. Code Ann. § 28-73-1106 9

Ark. Code Ann. § 28-73-402(a) (2007 Supp.)..... 9

Ark. Code Ann. § 28-73-402(a)(1-2) (2007 Supp.) 8

STATEMENT OF THE CASE

This case involves a dispute over the ownership of church property. The trial court, the Circuit Court of Pulaski County, Arkansas, heard the evidence and decided the case under neutral principles of Arkansas trust and property law. The petitioners appealed to the Arkansas Supreme Court, and it affirmed the case under the same neutral principles of Arkansas law. Neither Arkansas court based its decision on matters of church doctrine.

The complaint in the action stated causes of action for quiet title, ejectment, and replevin under Arkansas law. The question presented to the Arkansas courts was whether a deed for three-fourths of an acre that was given in 1971 from a member of a family named Bailey to three other members of the Bailey family "as Trustees of the Sand Hill A.M.E. Church, and to their successors in office" created a trust on the property in favor of The African Methodist Episcopal Church, Inc. (the "National A.M.E."). The circuit court and the Arkansas Supreme Court examined the 1971 Deed and held that it neither created a trust in favor of, nor conveyed any interest in the real property to, the National A.M.E. or the Arkansas Annual Conference of The African Methodist Episcopal Church, Inc. (the "Arkansas A.M.E."). Under Arkansas law, the 1971 Deed passed title to the members of the unincorporated Sand Hill A.M.E. church, through their representative trustees. App. 13-14. Title remained in the members of that congregation for thirty-four years. On October 9, 2005, the members of the Sand Hill A.M.E. church voted unanimously to

disassociate from the National A.M.E. The church members continued their association with one another, but not with the petitioners. On November 15, 2005, the church members conveyed the property to their newly formed non-profit corporation, the respondent. App. 4-5, 9. Because the petitioners were not granted any title or interest in the real property in the 1971 Deed, the Arkansas Supreme Court determined that they had no standing under Arkansas law to challenge the November 2005 conveyance of the real property to the respondent. App. 14.

The connection between the real property and the members of the Bailey family, who comprised the membership of the Sand Hill A.M.E. church in 1971 and in 2005, was very close. The Bailey ancestors, emancipated slaves from Tennessee, emigrated to Pulaski County, Arkansas in the late 1800's and settled on not less than sixty acres that are located on present day Bailey Road in Little Rock, Arkansas. Amazingly, through the era of Jim Crow, two World Wars, and the Great Depression, the Bailey family retained ownership of this tract.

In the late 1960's, Will Bailey owned approximately forty of the family's sixty acres. The three-fourths of an acre of real property at issue lies within the property owned by Will Bailey. During his lifetime, Will Bailey never conveyed any property outside of the family. Before his death, he contracted to sell the three-fourths of an acre to two nephews and a nephew-in-law, as trustees of the Sand Hill A.M.E. church. This transaction was completed by

Will Bailey's administratrix, who was also his niece, through the 1971 Deed.

The National A.M.E. publishes quadrennially *The Book of Doctrine and Discipline of the African Methodist Episcopal Church* (hereinafter the "Book of Discipline"). The 1968 edition of the Book of Discipline included a form of trust deed that would have conveyed real property to trustees of a local church in trust for the National A.M.E. S. App. 1-6. However, Will Bailey's administratrix, a member of the Sand Hill A.M.E. church, did not use the form of trust deed in the 1968 Book of Discipline when conveying the three-fourths of an acre to the trustees of the Sand Hill A.M.E. church. The 1971 Deed did not mention the National A.M.E. or the Arkansas A.M.E and created no trust in favor of either entity. The Arkansas courts held that the 1971 Deed granted title to the members of the Sand Hill church through its trustees, three Bailey family members.

SUMMARY OF ARGUMENT

The opinion of the Arkansas Supreme Court from which this petition arises did not decide any question of federal law or contravene any jurisdictional limitation under the United States Constitution. This Court authorized the judicial determination of church property disputes under neutral principles of state law in *Jones v. Wolf*, 443 U.S. 595 (1979). This case was decided by the trial court and the Arkansas Supreme Court under neutral principles of Arkansas law. The Arkansas courts made no determination of doctrinal or religious matters in the case.

Moreover, the Arkansas Supreme Court's decision in this case does not conflict with the decision of a court of last resort of another state or of this Court on a question of federal law. The recent, allegedly conflicting, cases from other states that are cited by petitioners also involve those courts' exercise of jurisdiction over property disputes. The courts from other states did not refuse in the cited cases to exercise jurisdiction because of "excessive entanglement" with religious matters. The distinction between this case and the cases cited by petitioners is, therefore, not in the exercise of jurisdiction to decide the church property dispute, but in the outcome — in this case, the local church rather than the hierarchal church prevailed on the facts presented under Arkansas law.

The petitioners failed to raise their other arguments in the trial court and to preserve the arguments for review.

ARGUMENT

I.

THE ARKANSAS COURTS ADJUDICATED THIS CASE UNDER NEUTRAL PRINCIPLES OF STATE LAW AND DID NOT REACH THE ISSUE OF "RELIGIOUS DOCTRINE" PRESENTED BY THE PETITIONERS.

In their first question for review, the petitioners assert that this case cannot be decided without "excessive entanglement" in issues of

religious doctrine and polity. On page 9 of the Petition, the petitioners argue that the decisions of the Arkansas courts in this case required a finding of whether the National A.M.E. would recognize the authority of the trustees of the Sand Hill congregation after the church's disassociation, a finding which the petitioners describe as religious in nature and beyond the jurisdiction of the civil courts. The petitioners implicitly argue that the Sand Hill congregation's unanimous vote to disassociate from the A.M.E. on October 9, 2005 severed all authority of the trustees of the congregation to convey any property of either petitioner to the respondent. (The deed from the trustees of the unincorporated Sand Hill church to the petitioner was dated November 15, 2005.) The Arkansas Supreme Court expressly made no determination regarding the status of the congregation's trustees in the eyes of either petitioner after the October 9, 2005 disassociation.

The Arkansas courts held that the 1971 Deed granted no right, title, or interest in the real property to either petitioner. App. 9, 14. Instead, the Arkansas courts held that the 1971 Deed conveyed title to the real property to the trustees of the Sand Hill A.M.E. church to be held in trust for the members of that unincorporated religious society. App. 13. The Arkansas Supreme Court consequently held that the petitioners lacked standing to challenge the validity of the November 2005 Deed from the trustees of the Sand Hill church to the respondent. The Arkansas Supreme Court did not reach any issue regarding the authority of the trustees of the Sand Hill church to transfer property of the

petitioners after the October 9, 2005 disassociation. App. 14.

The Arkansas courts decided this case based on their construction of the 1971 Deed under principles of state law. No doctrinal or religious issue was addressed by the Arkansas courts.

II.

THE ARKANSAS COURTS PROPERLY EXCERCISED JURISDICTION OVER THIS CASE AND DECIDED IT UNDER NEUTRAL PRINCIPLES OF ARKANSAS LAW.

In their second question for review, the petitioners assert that an amendment to a hierarchal church's constitution after the decision of this Court in *Jones v. Wolf*, 443 U.S. 595 (1979) should control the construction of a deed given decades before the amendment. The petitioners failed to raise this issue below and to preserve it for review. The Arkansas Supreme Court noted in its opinion that this issue had not been raised and preserved for appeal. App. 10, n. 1.

Furthermore, in its consideration of the language of the 1971 Deed together with the 1968 Book of Discipline that was in use in 1971 when the deed was given, the Arkansas Supreme Court followed long-standing Arkansas precedent regarding the construction of instruments of title. In 2001, the Arkansas Supreme Court stated in a church property dispute that it had "long held that parties to a

conveyance have a right to rely upon the law as it was at [the time of the conveyance]." *Arkansas Presbytery of the Cumberland Presbyterian Church v. Hudson*, 344 Ark. 332, 344, 40 S.W.3d 301, 310 (2001) (citing cases from 1981 through 1997). In other words, Will Bailey and his administratrix had the right under Arkansas law to rely on the provisions of the 1968 Book of Discipline when they rejected the trust deed therein, which would have granted a trust benefitting the National A.M.E. in the local church property, and prepared a deed that fulfilled their intention of deeding the property in trust for the membership of the Sand Hill congregation.

In *Jones v. Wolf*, 443 U.S. at 605, this Court held that the First Amendment does not require the states to adopt a rule of compulsory deference to religious authority. Arkansas declined a rule of compulsory deference in favor of the neutral principles of law approach to church property disputes in *Arkansas Presbytery*, 344 Ark. at 339. If adopted, however, the petitioners' argument would institute a rule of compulsory deference on the states. In the petitioners view, the National A.M.E. may unilaterally impose a trust in its favor on property owned for decades under state law by an affiliated, unincorporated religious society simply by writing such a trust into its governing documents. According to petitioners, the "long held" principles of state law governing the creation of trusts must yield to the religious hierarchy and its dictates. The First Amendment has never compelled such a limitation on the authority of the states. *See Jones v. Wolf*, 443 U.S. at 602 ("[T]he First Amendment does not dictate

that a State must follow a particular method of resolving church property disputes.").

Although the 1968 Book of Discipline included a form of trust deed in favor of the National A.M.E. and a plan for the holding of church property for the benefit of the hierarchal church, this edition deferred to state law. As pointed out by the Arkansas Supreme Court, the 1968 Book of Discipline states that "the meaning and intent of this chapter [on ownership of church property] . . . is to be subject to the said state law. . .." App. 11; S. App. 7. Arkansas law does not allow a stranger to title to impose a trust upon property owned by another. *See* Ark. Code Ann. § 28-73-402(a)(1-2) (2007 Supp.) (the creation of a trust requires a manifestation of intent by a settlor with capacity); *Farmers & Merchant's Bk. v. Deason,* 25 Ark. App. 152, 154-55, 752 S.W.2d 777, 779 (1988) (the interpretation of a trust involves a determination of the settlor's intent as manifested in the written instrument in light of the circumstances of its creation).

The creation of a trust under Arkansas law must satisfy standards that are codified in the Arkansas Code. Arkansas law has for most of a century prohibited the creation of a trust in real property by the mere inclusion in a deed of the terms "trustee", "as trustee", or "agent" following the name of the grantee. Ark. Code Ann. § 18-12-604(a)(1). Such a conveyance vests title in the grantee free of claims of all other persons. *Id.* § 18-12-604(a)(2), (b). However, the General Assembly made an exception to this general rule for conveyances of less than forty

acres to persons "as trustee" of any "religious society within this state".[1] *Id.* § 18-11-201.

In 2005, the Arkansas General Assembly enacted a comprehensive trust code. *See* Ark. Code Ann. §§ 28-73-101 to 28-73-1106 (2007 Supp.) (hereinafter the "Trust Code"). Because the Trust Code largely codified existing trust law, the General Assembly expressly provided that it would apply to all trusts created on, before, or after the effective date of September 1, 2005 and to all judicial proceedings commenced on or after September 1, 2005. *Id.* § 28-73-1106. The Arkansas Supreme Court correctly relied upon the Trust Code as a neutral principle of law under which the 1971 Deed was construed. The Trust Code expressly provides that a "trust is created only if" the owner/settlor takes some action indicating an intent to create a trust in property for a "definite beneficiary", among other requirements. *Id.* § 28-73-402(a) (2007 Supp.).

The Arkansas courts applied these neutral principles of property and trust law in their decisions in this case. The courts concluded that the 1971 Deed conveyed title to the subject real property to the three named individuals in trust for the members of the unincorporated Sand Hill A.M.E. church. Neither petitioner was named in the deed, neither was a "definite beneficiary", and neither was granted

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[1] The National A.M.E. was not a "religious society within this state" whose trustees could have held less than forty acres conveyed to them as trustees of the religious society. The National A.M.E., a Pennsylvania corporation, had never registered to do business in Arkansas, despite provisions in its 1933 charter requiring it to register in every state where it held property or had connectional churches. R. 537, at 53; R. 542.

any right, title or interest in the property. App. 13-14.

In their first question presented to this Court, petitioners challenge the Arkansas courts' exercise of jurisdiction in this case. Specifically, petitioners cite *Lemon v. Kurtzman*, 403 U.S. 602 (1971) in support of the argument that the Arkansas courts' hearing of this case involved "excessive entanglement of religion." But in all of the cases from other jurisdictions cited by petitioners in Section II of their Argument, the courts exercised subject matter jurisdiction over the disputes before them. (In *Jones v. Wolf*, this Court authorized the judicial determination of church property disputes under neutral principles of state law.) And unlike the dispute in *Lemon v. Kurtzman*, the cases cited by petitioners in Section II of their Argument involved only disputes over ownership of church property. *See African Methodist Episcopal Church, Inc. v. St. Johns African Methodist Episcopal Church*, 2009 Ohio 1394 (Ohio Ct. App., Fifth Div. 2009); *From the Heart Church Ministries, Inc. v. Philadelphia Baltimore Annual Conference, Inc.*, 184 Md. App. 11, 964 A.2d 215 (Ct. Spec. App. 2009); *Episcopal Church Cases*, 45 Cal. 4th 467, 198 P.3d 66 (Cal. 2009); *Episcopal Diocese v. Harnish*, 11 N.Y.3d 340, 899 N.E.2d 920 (N.Y. Ct. App. 2008); *St. Paul Church, Inc. v. Board of Trustees of the Alaska Missionary Conference of the United Methodist Church, Inc.*, 2006 Alas. LEXIS 156, 145 P.3d 541 (Alaska 2006); *Cumberland Presbytery v. Branstetter*, 1992 Ky. LEXIS 28, 824 S.W.2d 417 (Ky. 1992); *North Cent. N.Y. Annual Conference v. Felker*, 816 N.Y.S.2d 775, 28 A.D.3d 1130 (N.Y. App. Div. 2006).

Furthermore, in section II of their Argument, petitioners request this court to grant certiorari in this case because its outcome differs from the outcome in the foregoing cases. The difference in outcomes can be explained by differences in state law and in the facts of the cases, primarily the incorporation of the local church under the auspices of the hierarchal church or adherence to polity of the hierarchal church, but not on the basis of federal law. *See, e.g., Episcopal Church Cases, 45* Cal. 4th at 473, 495, 198 P.3d at 70, 85 (Kennard, J., concurring) (The local church was incorporated under California law, which was amended in 1982 to impose a trust in local church property where provided for in the greater church's governing documents, and "[The] governing documents [of the general church made] it clear that church property is held in trust for the general church."); *Cumberland Presbytery*, 824 S.W.2d at 422 (distinguishing the award of property to a faction of a local church loyal to the hierarchy from an earlier case in which the local congregation voted unanimously to disassociate from the hierarchal church and the local congregation was awarded possession of church property); *Episcopal Diocese*, 11 N.Y.3d at 347, 899 N.E.2d at 921 (local church was incorporated and agreed to abide by the constitution and canons of the general church); *St. Paul Church*, 145 P.3d at 546 (Before the local church incorporated, the hierarchal church informed in writing those interested in forming a local church that the local church would be tied together with the World church and that there is no such thing as locally owned church property. The local church signed a statement of intent and agreed to worship

under the Book of Discipline of the hierarchal church); *Felker*, 816 N.Y.S.2d at 775, 28 A.D.3d at 1130 (property awarded to the hierarchal church where local church, which had previously been associated with other denominations, joined the hierchal church, whose existing Book of Discipline imposed a trust on the property of the member church); *From the Heart Christian Ministries*, 964 A.2d at 219, 229-234 (finding consent in the local church's governing documents and other writings, during the entire period of association, to the hierarchal church's governing documents, which included a mandatory trust in favor of the hierarchal church in real property, but not personal property, of the local church); *St. John's A.M.E. Church*, 2009 Ohio at P3, P43-P60 (finding that St. John's governed itself according to the hierarchal church's Book of Discipline and awarding property to the hierarchal church based on the application of the current Book of Discipline to a deed given in 1924).

As this Court stated in *Jones v. Wolf*, 443 U.S. at 606, the result under a neutral principles analysis is "not foreordained". Differences in outcomes of cases between states, and between cases within the same state, are to be expected under a neutral principles analysis. Such differences involve no question of federal law.

III.
COURSE OF DEALING WAS NOT RAISED BELOW AND PRESENTS NO ISSUE OF FEDERAL LAW.

In their third question presented for review, the petitioners assert that a hierarchal church's "foundational document" can be altered over time by a course of dealing. In the trial court, the petitioners maintained that the National A.M.E.'s Book of Discipline had not changed over time with respect to the imposition of a trust on property held by local churches. R. 263, 507. The petitioners therefore did not raise alteration of any document of church governance by course of dealing as a defense in this action. R. 34-41, 148-49.

Furthermore, course of dealing is a contractual principle from the Uniform Commercial Code, *see* Ark. Code Ann. § 4-2-202(a) (2007 Supp.), a matter of state law. The course of dealing of the parties presents no question of federal law.

Under point III of their argument, the petitioners do not relate any course of dealing between the parties to amendments to the Book of Discipline which would impose a trust on the property of the Sand Hill church. The amendment to the Book of Discipline to which the petitioners refer[2]

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[2] The petitioners now argue that the changes to the Book of Discipline came in 1984. At trial, the petitioners did not introduce evidence of the date of the changes to the Book of Discipline. Excerpts from the 1968, 2000, and 2004 editions were received into evidence.

includes a statement that the trustees of a local church hold all property in trust for the National A.M.E., even though "previously executed" conveyances of property to the local church's trustees did not include a trust in favor of the National A.M.E., where certain conditions were met, such as use of the name "A.M.E. Church", acceptance of pastors from an annual conference, and the payment of conference assessments. The petitioners failed to raise this argument below, App. 10, n.1, and the Arkansas courts did not address the argument. App. 13-14.

CONCLUSION

For these reasons, this Court should deny petitioners' petition for the issuance of a writ of certiorari.

Respectfully Submitted,

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SUPPLEMENTAL APPENDIX

PLAINTIFF'S EXHIBIT NO. 18

THE BOOK OF DOCTRINE AND DISCIPLINE OF THE AFRICAN METHODIST EPISCOPAL CHURCH (1968 ed.)

SECTION 2 **GENERAL CHURCH PROPERTY**

1. For the security of our meeting houses and the premises belonging thereunto, let the following plan of a deed of settlement be brought into effect in all possible cases wherever the law will permit it in a State.

2. If necessary, each Annual Conference may make such modifications in the deed as may be required by the laws of any State, so as to firmly secure the premises to the African Methodist Episcopal Church.

3. No personal or real property whatsoever of the A. M. E. Church in any foreign district or parts thereof shall be purchased, disposed of, sold, or otherwise encumbered except by the written consent of the presiding bishop and trustees elected by the Annual Conference in which the property is located.

4. The incorporation of all our churches, where the law will permit it, should be attended to as soon as possible. And in every corporation of the A.M. E. Church the pastor shall be president of the corporation and of the board of trustees, and the method of electing trustees shall be the same as prescribed in the Book of Discipline. Every pastor

shall see that the provision is a part of the articles of incorporation.

Abandoned Property

If any church property is abandoned in consequences of the disbanding of the society the title of said property shall vest in the Annual Conference in which it is located. Said property shall be sold by the Annual Conference Trustees, and the proceeds deposited in the Annual Conference Treasury, to be used for mission work and church extension in the conference which said property is located. The funds shall be disbursed by the direction of the conference committee on church extension with the approval of the Annual Conference. A duplicate record of the transaction shall be deposited with the General Secretary of the African Methodist Episcopal Church.

a. Form of Deed

This indenture, made this .....day of .....in the year of our Lord one thousand.....hundred and .....between .....of the ....., in the state of ....., (if the grantor be married, insert the name of his wife) of the one part, and .....trustees, in trust for the use and purposes hereinafter mentioned, all .....of the .....in the Sate of .....aforesaid, of the other part, witnesseth, that the said.....(if married, insert the name of his wife), for and in

consideration of the sum of .....specie, to .....in hand paid, at and upon the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath (or have) given, granted, bargain, sold, released, confirmed, conveyed and by these presents doth (do) give, grant, bargain, sell, release, confirm, and convey unto them the said trustees and their successors (trustees in trust for the uses and purposes thereinafter mentioned and declared) all the estate, right, title, interest, property, claim, and demand whatsoever, either in law or equity, which he, the said .....(if married here insert his wife's name) hath (or have) in, to, or upon all and singular, a certain lot or piece of land, situated, lying, and being in the .....and State aforesaid, bounded as follows to wit: (here insert the several courses and distances of the land to the place of beginning), containing and laid out for ..... acres of land, together with all and singular the houses, woods, water ways, privileges, and appurtenances thereto belonging or in any wise pertaining to have and to hold all and singular the above mentioned and described lot or piece of land; situated, lying, and being as aforesaid, together with all and singular the houses, woods, water ways and privileges thereto belonging unto the said Trustees and their successors in office forever into.....that they shall erect or cause to be erected thereon, house or place of worship, for the use of the members of the African Methodist Episcopal Church in the United States of America, according to the rules and Discipline of said Church, which from time to time may be adopted and agreed upon by the ministers and preachers of the

said Church, at their General Conference in the United States of America, Africa, Canada, South America, and the West Indies. In further trust and confidence, they shall at all times forever hereafter permit such ministers and preachers belonging to said church, as shall from time to time be duly authorized by the General Conference of the said African Methodist Episcopal Church, or by annual conferences authorized by the said Conferences to preach and expound God's holy word therein; and in further trust and confidence, that as often as any one or more trustees, herein before mentioned, shall dies or cease to be a member or members of said Church, according to the rules, it shall be the duty of the stationed minister or preacher (authorized as aforesaid) who hall have the pastoral charge of the members of said church, to call a meeting of the members of the church according to law as soon as conveniently possible and when so met, the said minister or preacher shall proceed to nominate one or more persons to fill the place or places of him or them whose office or offices has or have been vacated as aforesaid. Provided the person or persons so nominated shall have been one year a member or members of the said church immediately preceding such nomination, and be at least twenty-one years of age; and the said members, so assembled, shall proceed to elect and by a majority of votes appoint the person or persons so nominated to fill such vacancy or vacancies in order to keep up the number of trustees forever. In case of an equal number of votes for and against the said nomination, the stationed minister or preacher shall have the casting vote.

Provided, nevertheless, that the said trustee or any of them, or their successors have advanced or

shall advance any sum or sums of money, or are, or shall be responsible for any sum or sums of money on account of said premises, and they, the said trustees, or their successors, be obliged to pay the sum or sums of money, they or a majority of them shall be authorized to raise the said sum or sums of money by mortgage on the said premises, or by selling the said premises after notice given to the pastor or preacher that has the oversight of the congregation attending divine services on the said premises, if the money due be not paid to the said trustees, or their successors, after paying the debt, and other expenses which are due, from the money arising from such sale, shall deposit the remainder of the money produced by the stewards of the society belonging to or attending divine service on said premises, which surplus or the proceeds of such sale, so deposited in the hands of the said steward or stewards, shall be at the disposal of the next annual conference, authorized as aforesaid; which said annual conference shall dispose of the said money according to the best of their judgment, for the use of the said society. And the said .....doth, by these presents, warrant and forever, defend all and singular the above mentioned and described lot or piece of ..... ground with the appurtenances thereto belonging, unto them the said ..... and their successors chosen and appointed, as aforesaid, from the claim or claims of him, the said ..... heirs and assigned heirs from the claim or claims of all persons, whatsoever.

In testimony whereof, the said..... .....(if married, insert the name of his wife) have hereto set their hands and seals the day and year aforesaid.

Sealed and delivered in presence of us:

Grantor's (L.S.)

His Wife's (L.S.)

Received the day of the date of the above written indenture ..... the consideration therein mentioned in full.

Witnesses,

Grantor's (L.S.)

County, ss.

Be it remembered that on the ..... day of ..... in the year of our Lord one thousand .....(personally appeared before me one of the Justices of the Peace) in the county of ..... and State of ..... and within name .....(the grantor, if married, insert the name of his wife), and acknowledged the within deed of trust to be their act and deed, for the uses and purposes therein mentioned and declared; and she, the said ..... wife of the said ..... being separate and apart from her, the said .....husband, by me examined, declared that she had made the said acknowledgment freely and with her own consent, without being induced hereto, through fear or threats of her said husband. In testimony whereof, I have hereunto set my hand

and seal, the day and year first above written

.....

(Here the Justice's name).

1. *Let all our churches be built with simplicity and dignity.*

2. *Whereas some of the states and territories (and countries) have special acts on their statue books governing religious bodies, therefore the meaning and intent of this chapter wherever it refers to the law of the State or Territory is to be subject to the said state law and not to any individual church corporation that is now or may be incorporated.*

3. *Any church or congregation among us that will not submit wholly to the spiritual government of our General and Annual Conferences shall be disowned.*